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भारत का राजपत्र
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सं. 29] नई दिल्ली, अगस्त 8—अगस्त 14, 2021 शनिवार/ श्रावण 17—श्रावण 23, 1943
No. 29] NEW DELHI, AUGUST 8—AUGUST 14, 2021, SATURDAY/ SRAVANA 17 –SRAVANA 23, 1943

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India (Other than the Ministry of Defence)

वित्त मंत्रालय
(वित्तीय सेवाएं विभाग)

नई दिल्ली, 11 अगस्त, 2021

का.आ. 554.—गोवा, दमन और दीव (बैंक पुनर्गठन) विनियम, 1962 (1962 का 11) के विनियम 4 के उप-विनियम (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और वित्त मंत्रालय, वित्तीय सेवाएं विभाग की दिनांक 1 सितम्बर, 2015 को भारत के राजपत्र, भाग-II, खंड-3, उप-खंड (ii) में दिनांक 5 सितंबर, 2015 को प्रकाशित संख्या का.आ. 1728 को अधिक्रमित करते हुए, ऐसी बातों को छोड़कर जिन्हें ऐसे अधिक्रमण से पूर्व किया गया हो या करने में लोप किया गया हो, केंद्रीय सरकार एतद्वारा शाखा प्रबंधक, भारतीय स्टेट बैंक, पणजी मुख्य शाखा को बैंको नेसियोनल अल्ट्रामरिनो और कैक्सा इकोनोमिका डि गोवा का अभिरक्षक नियुक्त करती है।

[फा. सं. 7/177/2018 (बीओए-I)]

ज्ञानोतोष राय, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 11th August, 2021

S.O. 554.—In exercise of the powers conferred by sub-regulation (1) of regulation 4 of the Goa, Daman and Diu (Banks Reconstruction) Regulation, 1962 (11 of 1962) and in supersession of the Ministry of Finance, Department of Financial Services number S.O. 1728, dated the 1st September, 2015, published in the Gazette of India, Part II, Section 3, Sub-Section (ii), dated the 5th September, 2015, except as respects things done or omitted to be done before such supersession, the Central Government hereby appoints the Branch Manager, State Bank of India, Panaji Main Branch as the Custodian of Banco Nacional Ultramarino and Caixa Economica de Goa.

[F. No. 7/177/2018 (BOA-I)]

JNANATOSH ROY, Under Secy.

विदेश मंत्रालय

(सी.पी.वी. प्रभाग)

नई दिल्ली, 29 जुलाई, 2021

का.आ. 555.—राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश ।

एतद् द्वारा, केंद्र सरकार भारत के दूतावास, बीजिंग में श्री रवि रोशन सहायक अनुभाग अधिकारी को दिनांक 26 जुलाई 2021 से सहायक कोंसुलर अधिकारी के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[फा. सं. टी-4330/01/2016]

ब्रह्म कुमार, निदेशक (सी.पी.वी.)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 29th July, 2021

S.O. 555.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints Shri Ravi Raushan, Assistant Section Officer as Assistant Consular Officer in Embassy of India, Beijing to perform the Consular services with effect from 26 July, 2021.

[F. No. T-4330/01/2016]

BRAMHA KUMAR, Director (CPV)

रेल मंत्रालय

(रेलवे बोर्ड)

नई दिल्ली, 4 अगस्त, 2021

का.आ. 556.—केंद्रीय सरकार, सरकारी स्थान (अप्राधिकृत अधिभोगियों की बेदखली) अधिनियम, 1971 (1971 का 40) की धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिनियम के प्रयोजन के लिए संपदा अधिकारी बनने हेतु केंद्रीय सरकार के राजपत्रित अधिकारी रैंक के समतुल्य अधिकारी होने पर, नीचे दी गई सारणी के स्तंभ (1) में उल्लिखित अधिकारी को नियुक्त करती है जो सारणी के स्तंभ (2) में तत्स्थानी प्रविष्टि में विनिर्दिष्ट

सरकारी स्थान के संबंध में अपनी अधिकारिता की स्थानीय सीमाओं के भीतर संपदा अधिकारी पर उक्त अधिनियम द्वारा या उसके अधीन प्रदत्त शक्तियों का प्रयोग करेगा और अधिरोपित कर्तव्यों का निर्वहन करेगा।

सारणी

अधिकारी का पदनाम	सरकारी स्थान और अधिकारिता की स्थानीय सीमाओं की कोटियां
(1)	(2)
रेलटेल कॉर्पोरेशन ऑफ इंडिया लिमिटेड के कॉर्पोरेट कार्यालय में तैनात महाप्रबंधक/ (प्रशासन)/ समूह महाप्रबंधक (प्रशासन)/ कार्यपालक निदेशक (प्रशासन)	रेलटेल कॉर्पोरेशन ऑफ इंडिया लिमिटेड, इस्ट किदवई नगर, नई दिल्ली-110023 के प्रशासनिक नियंत्रण के अधीन कार्यालय परिसर और आवासीय घर।

[फा. सं. 2018/एलएमएल-1/14/10]

ए. के. सिन्हा, कार्यपालक निदेशक (भूमि एवं सुविधाएं और स्टेशन विकास)

MINISTRY OF RAILWAYS

(Railway Board)

New Delhi, the 4th August, 2021

S.O. 556.—In exercise of the powers conferred by section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (40 of 1971), the Central Government hereby appoints the officer mentioned in column (1) of the Table below, being an officer equivalent to the rank of gazetted officer of the Central Government, to be estate officer for the purpose of the said Act, who shall exercise the powers conferred and perform the duties imposed on the estate officer by or under the said Act, within the local limits of his jurisdiction in respect of the public premises specified in the corresponding entry in column (2) of the table. –

TABLE

Designation of the officer	Categories of public premises and local limits of jurisdiction
(1)	(2)
General Manager/(Administration)/Group General Manager (Administration)/Executive Director (Administration) posted at corporate office of RailTel Corporation of India Ltd.	Office premises and residential houses under the administrative control of the RailTel Corporation of India Ltd., East Kidwai Nagar, New Delhi-110023.

[F. No. 2018/LML-I/14/10]

A. K. SINHA, Executive Director (L&A & SD)

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 9 अगस्त, 2021

का.आ. 557.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार यूनियन बैंक आफ इंडिया के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 157/2019) प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2021 को प्राप्त हुआ था।

[सं. एल-12011/28/2019-आईआर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 9th August, 2021

S.O. 557.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 157/2019) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 09.08.202.

[No. L-12011/28/2019-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 157 of 2019

Between:

The Deputy General Secretary,
Union Bank Employees Union,
Kanpur Region, C/o Union Bank of India,
Swaroop Nagar, Kanpur (U.P)

AND

1. The Dy. General Manager,
   Union Bank of India, Regional Office,
   117/H-1/240, Pandu Nagar,
   Kanpur (U.P)-208005.

2. The Field General Manager,
   Union Bank of India,
   Near Mantri Awas, Vibhuti Khand,
   Gomti Nagar, Lucknow.

AWARD

This order arises in response to the reference received before this Tribunal vide Government of India letter No. L-12011/28/2019-IR(B-II) dated 09.04.2019. The reference is stated under the schedule below:-

> ***"Whether the action of the management of Union Bank of India in not considering the request of Shri Shailendra Johari, Head Cashier, Harjinder nagar Branch, Kanpur for his transfer to other Branch is legal, fair and just. If not, to what relief the workman Shri Shailendra Johari is entitled to?'***

After receipt of the reference claim application was submitted by Union Bank Employees' Union (U.P) with averments which may be concisely stated as follows. Aggrieved workman Shailendra Johri was previously posted as head cashier of the Union Bank of India, branch at Harjinder Nagar at Kanpur. Later the aggrieved workman made a request before Deputy General Manager for transferring him to Kalyanpur branch or to Sarvodaya Nagar branch but O.P1 had not allowed the request. It is stated that there was a vacancy of the post of Head cashier at Kalyanpur branch. It is further stated that Chandra Shekhar Mishra, Head cashier was transferred from Armapur branch to Yashoda Nagar branch. Mrs Neha Verma was transferred from IIT, Kanpur branch to Kaushal Puri branch.

During pendency of the proceeding it was submitted on behalf of claimant workman that he has been transferred from Harjinder Nagar branch to Sismoon branch. It is further stated that there was assurance from the Bank Management that in future his request for transfer to his branch of choice was likely to be taken up. The claimant has stated in writing that he is not desirous of pursuing his claim before this Tribunal. In view of the writing submitted by the petitioner union the reference stands disposed of with observation that it appears a redundant exercise to embark upon the actual aspects of the reference. Parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 9 अगस्त, 2021

का.आ. 558.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 28/2017) को प्रकाशित करती है जो केन्द्रीय सरकार को 09.08.2021 को प्राप्त हुआ था।

[सं. एल-12011/24/2017-आईआर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 9th August, 2021

S.O. 558.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 09.08.2021.

[No. L-12011/24/2017-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR

ID NO. 28 of 2017

In the matter of Industrial Dispute

Between :

The President,
Indian National Trade Union Congress (INTUC),
U.P, 7, Deen Dayal Nagar,
Nawabganj-208002 (U.P)

Versus

1. The General Manager (P),
   Punjab National Bank, Head Office ,
   Bhikaji Cama Place, New Delhi-110066

2. The Circle Head, Punjab National Bank,
   Circle Office, Vibhuti Khand, Gomti Nagar
   Lucknow-226010

AWARD

The Central Government, Ministry of Labour referred the dispute as stated in the schedule below vide notification no L-12011/24/2017-IR(B-II) dated 17.05.2017 to this Tribunal for adjudication.

SCHEDULE

"Whether the action of the management of Punjab National Bank in dismissing the services of Shri Kamlesh Chaturvedi vide order dated 28.07.2016 during the pendency of Conciliation Proceedings and without obtaining express permission of Conciliation Officer in violation of Section 33(1) of I.D. Act, 1947 is just, fair and legal? If not, to what relief the workman concerned is entitled to?"

The background of this Industrial Dispute is stated as follows:-

It is alleged that on 18.03.2016, workman along with very few other PNB employees and about 100 outsiders forcibly entered into the building of the Circle office shouting various slogans and playing drums, without permission of the Competent Authority. Security personnel of Circle office tried to check him and the outsiders from entering the premises of Circle office, but he along with outsiders entered into the premises of Circle Office thus showing riotous, disorderly and indecent behaviour on the premises of the bank.

His above riotous, disorderly and indecent behaviour on the premises of the bank was tantamount to Gross misconduct in terms of Para 5(c) of the Bipartite Settlement dt. 10.04.2002 as amended from time to time.

It appears before effecting the order of dismissal without notice upon the workman the O.P management did not comply with mandatory provisions enshrined in section 33 (1)(b) or 33(2)(b) of the Industrial Disputes Act. It is seen that the salary for one month was paid on 16.08.2016

Claimant workman Shri Kamlesh Chaturvedi was dismissed without notice by management of Punjab National Bank after enquiry conducted by one enquiry officer who was of rank of manager. Subject matter of the enquiry was on seven charges as stated below:-

Charge 1:

On 18.03.2016, Shri Kamlesh Chaturvedi along with very few other PNB employees and about 100 outsiders forcibly entered into the building of the Circle office shouting various slogans and playing drums, without permission of the Competent Authority. Security personnel of Circle office tried to the check workman and the outsiders from entering the premises of Circle Office, but he along with outsiders entered into the premises of Circle Office thus showing riotous , disorderly and indecent behaviour on the premises of the bank.

Charge 2:

On 18.03.2016, Shri Kamlesh Chaturvedi along with about 100 unscrupulous outsiders forcibly entered into the cabin of the Circle Head, Kanpur, without due permission and virtually gheraoed it. He along with these outsiders staged an unauthorized demonstration in the cabin and unilaterally started making allegations against the Circle Head and misbehaved with the Circle Head and other officers of Circle office showing riotous behavior, with an intention to demoralize the authorities and put undue pressure on the management. With the intervention of police authorities and much effort of PNB employees unwanted outsider elements (who were brought by him) vacated the Circle Office building.

His above act along with unscrupulous outsider elements was an attempt to cause huge loss to staff and documents. It was an attempt from his side to cause damage to the property of the bank.

His above act tantamount to Gross Misconduct in terms of Para 5(c) and 5(d) of the Bipartite Settlement and his act of failing to show proper consideration, courtesy or attention towards officers tantamount to Minor Misconduct in terms of Para 7(j) of the Bipartite Settlement dated 10.04.2002 as amended from time to time.

Charge 3:

On 18.03.2016, Shri Kamlesh Chaturvedi along with 100 outsiders forcibly entered into the premises of the Circle office, without the permission of the competent Authority and started the Videography of the Circle Office and inside of the cabin of Circle Head.

Further, without due permission, he uploaded the video coverage of Circle office premises including Circle head's cabin on social media, thereby disclosing the information regarding the affairs of the Bank and thereby trying to tarnish the image of the Bank and violated the guidelines with regard to use of social media as per HRD Circular No.-700 Dated 14.07.2015

Instead of addressing his grievances to his superiors/higher authorities he let those published in print and electronic media. His act is prejudicial to the interest of the Bank and an effort to tarnish the image of the bank.

His above act was tantamount to Gross Misconduct in terms of Para 5(b) and 5(j) of the Bipartite Settlement dated 10.04.2002 as amended from time to time.

Charge 4:

On 11.02.2016, Shri Kamlesh Chaturvedi along with Sh. Sushil Chak (PF O.-70316), Sh. Ashoutosh Srivastava (PF No. 82882) and two outsiders (namely Sh. Ashish Pandey and Sh. Ajay Singh, reportedly officer bearers of INTUC) entered into the cabin of Circle Head and put pressure on him to transfer him back from BO:M-Kidwai Nagar, Kanpur to BO:Mall Road, Kanpur and to treat him on duty for the days he was on the job of representing against the Bank before various Labour Courts. Thus he violated the provisions of Bipartite Settlement by bringing outside pressure.

His above act tantamount to Gross Misconduct in terms of Para 5(c) of the Bipartite Settlement dated 10.04.2002 as amended from time to time.

Charge 5:

Shri Kamlesh Chaturvedi has not performed his work assigned to him diligently. He has been in the habit of starting his work late and closing it much before the time violating Banks's norms. A few recorded timings are furnished below:-

Date	Earliest Login Time/ you started at	Last logout Time/ you finished at
01.01.2016	11:24:09	16:30:34
02.01.2016	11:03:15	16:02:53
04.01.2016	10:46:03	16:49:47
05.01.2016	10:51:13	12:16:34
06.01.2016	10:55:08	11:55:21
11.01.2016	10:48:02	13:50:37
15.01.2016	11:09:51	15:19:44
16.01.2016	10:55:18	14:43:22
18.01.2016	10:54:16	14:07:54
21.01.2016	10:55:37	14:41:07
25.01.2016	12:22:03	13:28:03
29.01.2016	10:46:50	12:43:23
30.01.2016	10:57:16	14:20:07
01.02.2016	10:53:09	14:02:22
02.02.2016	10:49:23	13:45:41
03.02.2016	11:25:37	16:20:37
04.02.2016	10:51:10	14:24:31
05.02.2016	10:39:47	14:38:02
06.02.2016	10:45:56	14:00:45
08.02.2016	10:49:22	16:50:59
09.02.2016	10:54:07	13:05:12
12.02.2016	11:37:36	14:25:40
19.02.2016	10:45:14	14:22:45
20.02.2016	10:31:42	13:50:01
22.02.2016	11:02:18	13:51:43
23.02.2016	10:53:40	14:52:08
24.02.2016	10:55:13	16:15:03
25.02.2016	10:54:36	13:59:40
29.02.216	10:58:39	13:27:40
01.03.2016	10:47:42	13:49:37
02.03.2016	11:01:12	16:30:39
05.03.2016	11:03:21	14:31:41

09.03.2016	10:48:45	14:31:41
10.03.2016	10:51:52	14:07:14
11.03.2016	10:53:04	16:22:24
16.03.2016	10:32:56	12:58:38

He also failed to perform the lawful duties allotted to him vide Office Order No. 06/15 of BO: M-Kidwai Nagar, Kanpur.

His above act was tantamount to Gross Misconduct in terms of Para 5(g) of th Bipartite Settlement and his act of neglect of work, negligence in performing duties tantamount to Minor Misconduct in terms of Para 7(c) of the Bipartite Settlement dated 10.04.2002 as amended for time to time.

Charge 6:

Shri Kamlesh Chaturvedi has been in the habit of making utter disregard to decency in dress while performing duty. He prefers to wear pyjamas and kurtas of colours which are against corporate cultures and set decency guidelines of the Bank.

His above act of marked disregard of ordinary requirement of decency in dress amount to Minor Misconduct in terms of Para 7(k) of the Bipartite Settlement dated 10.04.2002 as amended from time to time.

Charge 7:

Shri Kamlesh Chaturvedi has been in the habit of making himself absent from duty without submitting leave and getting it approved by competent authority. Events as mentioned in Annex-1 clearly reveal that he tended to submit the leave application after he actually availed the same.

His above act was tantamount to Minor Misconduct in terms of Para 7(a) of the Bipartite Settlement dated 10.04.2002 as amended from time to time.

After conclusion of the enquiry the enquiry officer submitted the report with findings stated below:-

Charges	Findings
Charge-1	Proved
Charge-2	Proved
Charge-3	Proved
Charge-4	Proved
Charge-5	Partly Proved
Charge-6	Proved
Charge-7	Not Proved

Shri Kamlesh Chaturvedi after dismissal without notice has raised the Industrial dispute stating that both the appointment of the enquiry officer and disciplinary authority was against the established rules of baking management. Later the Industrial dispute was referred to this Tribunal.

After receipt of the reference the workman submitted the claim statement with averments which is concisely stated below:-

The order of dismissal without notice dated 28.07.2016 passed by the management of Punjab National Bank was against the provision under section 33(1) of the Industrial Disputes Act (ID Act). It is averred that before dismissal dated 28.7.2016 conciliation proceedings were pending before Assistant Labour Commissioner (Central) notice no. K/7(1-8)/2016-E-2 dated 27.07.2016 issued by Assistant Labour Commissioner (Central) under section 33 of ID Act was issued to the employer and failure of conciliation report dated 22.02.2017was submitted by Assistant Labour Commissioner(Central). It is pleaded that after commencement of the conciliation proceedings and during its pendency the management employer is debarred from passing any order of dismissal without getting permission in writing or approval of the authority the Assistant Labour

Commissioner (Central). Employer submitted the written statement with averments which may be summarized as follows:-

On 18.03.2016, under the leadership of Shri Kamlesh Chaturvedi Ex-Special Assistant , posted at Punjab National Bank, Branch office, M-Block, Kidwainagar, Kanpur staged riotous and disorderly acts at the premises of Punjab National Bank, Circle Office, Birhana Road, Kanpur, along with few PNB employees and along with outsiders. No prior permission of the Competent Authority of the Bank was obtained and no information was given to the management. It is specifically mentioned that the aforesaid PNB Staff member deliberately got around 100 outsiders who gathered outside the Bank's Building. After staging the demonstration outside the Bank premises, several persons under the leadership of Shri Kamlesh Chaurvedi entered inside the Circle Office premises situated at 1st floor of the building forcibly. They also entered forcibly and violently inside the cabin of the Circle Head. Almost one sided allegations were continued to be made against the Circle Head and the other Bank authorities by Shri Kamlesh Chaturvedi and others.

After the incident, a charge sheet dated 16.6.2016 with charges on seven heads was served on Shri Kamlesh Chaturvedi by the disciplinary authority. The enquiry was taken up and in the enquiry on some occasion Shri Kamlesh Chaturvedi had appeared and participated. After conclusion of enquiry the enquiry officer had concluded that Shri Kamlesh Chaturvedi had committed riot and indecent behaviour and had put undue pressure amounting to gross misconduct in terms of para 5(c) and 5(d) of bipartite settlement. It was further concluded that Shri Kamlesh Chaturvedi had exposed the inside situation to the print and electronic media amounting to gross misconduct in terms of para 5(b) an 5(j) of bipartite settlement. It was further concluded that Shri Kamlesh Chaturvedi put pressure on the Circle head to transfer him back to branch office, Mall Road, Kanpur and to treat him as on duty on the days he was representing the matter before the Labour Court. It was further concluded by the enquiry officer that Shri Kamlesh Chaturvedi was irregular in attendance. Further the enquiry officer concluded that Shri Kamlesh Chaturvedi was not obeying the dress code for bank employees.

To points to be answered in this reference are as follows:-

1. Whether the order of dismissal of the services of Shri Kamlesh Chaturvedi dated 28.07.2016 during pendency of conciliation proceeding without obtaining written permission of the conciliation officer is legally valid?

2. To what relief the workman is entitled?

Points:-

By order dated 28.06.2016 issued by the Circle head Disciplinary Authority Shri Sarvesh Srivastava, Sr. Manager Jawahar Nagar was appointed as Enquiry Office and Shri Satya Prakash, Manager. Circle Office was appointed as Presenting Officer. On a mere apprehension of the charge sheeted employee that fair enquiry was not workable with appointment of particular Disciplinary Authority and also some official as Presenting Officer, Disciplinary Authority and the Presenting officer in the enquiry cannot be changed. Charge-sheeted employee might not get the services of a lawyer but it is seen that he was allowed to engage defense representative/Trade Unionist to defend his case in the enquiry. From the copy of the enquiry report it is well found that copies of the documents available with the Presenting Officer were made available to the charge sheeted employee. It is submitted on behalf of the claimant was that there was undue haste in the matter of initiation and conclusion of the enquiry debarring the charge-sheeted employee form submitting proper defense it is also seen that the charge sheeted employee was given due opportunity in participating in enquiry proceeding.

In the enquiry report though there is faint reference that at the time of riotous demonstration on 18.03.2016 the charge-sheeted employee was holding firearm it has not been clarified as to what kind of firearm was seen. With regard to fire arm there is meagre evidence though there appears huge evidence that the demonstration was held. With beating of drums at Bank office premises. Beating of drums and disturbance with sounds and shouting of slogans are bound to cause hindrance to normal functioning of the office. Though this Tribunal is not expected to function as appellate forum of the authority who had performed the domestic enquiry the observation of the Enquiry officer that charge no. 6 has been proved is erroneous on record. There can be no bar against wearing of traditional Indian dresses by a bank employee. Bank and its offices cannot smoothly run with cantankerous and disgruntled employees. Employees do have their grievances which can be addressed properly if placed before the proper forum at the right time. Punctuality, dutifulness, diligence and patience and intelligence of the employees are indispensable for smooth functioning of the Banks and its offices. Irregular attendance is to be treated as minor misconduct as per para 7(b) of the Bipartite settlement. 7(e) debars the employees from doing nuisance inside the bank premises. It has been acknowledged by the workman that he had received the set of documents of the enquiry. Even the workman was given the opportunity to inspect the original documents (paper 6 of the Enquiry Report)

It is claimed that on 18.03.2016 the demonstration was held with prior notice to the authority and notice to the authority was sent by email.

"S. K. Singh hosh me aayoo
Aisa lagta hai ki aap insaan hai hi nahi
Aap ne apne ko khuda se upar samajh liya
Aap yeh jo kar rahe hai accha nahi kar rahe hai
Aap yaha par ghas cheelne ke liye baithe hai
Aapne branche ko dukanu me kholi hai
Tumhari chitti patri nikalwa rahe hai jo bihar me gaban kare ho."

This above statement referred by a workman who claims to have rendered service in the Banking sector appears to be highly provocative. Some objections pointing to fairness and transparency of the enquiry have been raised by the workman but those objections are of trivial nature when examined in the context of the scenario of the enquiry. Instead of seeking apology with regard to irregular attendance during the months of January, February and March of 2016 the workman has submitted the reasons for log-in and log-out of his computer which do not appear to be satisfactory. As per para 7 irregular attendance is minor misconduct.

In the case of Maharashtra State Board of Secondary and Higher Secondary Education v/s K.S. Gandhi, (1991) 2 SCC 716,738 it has been observed by Hon'ble Supreme Court in the following words:-

The omnipresence and omniscience of the principle of natural justice act as deterrence to arrive at arbitrary decisions in flagrant infraction of fair play. But the applicability of the principles of natural justice is not a rule of thumbor a strait-jacket formula as an abstract proposition of law. It depends on the facts of the case, nature of the inquiry and the effect of the order/decision on the rights of the person and attendant circumstances.

There is sufficient evidence to establish that before 28.07.2016 conciliation proceedings were pending before the Assistant Labour Commissioner, Kanpur between the workman and the Management of the Punjab National Bank.

It appears neither the provisions under section 33(1)(b) nor provisions under section 33(2)(b) of the Industrial Disputes Act, 1947 were complied before effecting the order of dismissal upon the workman.

The above stated provisions of the ID Act are mandatory in nature

It may be correct that a cantankerous and disgruntled employee deserves no sympathy. Dismissal without notice imposed upon the workman without taking permission of the authority before whom a dispute between the workman and the management was pending as mandated in section 33(1)(b) of the Industrial Disputes Act is per se unsustainable in the eye of the law. Dismissal of the workman at the fag end of his career in the circumstances is shockingly disproportionate. In view of the circumstances as stated in the foregoing discussions and for ends of justice the order of dismissal of the claimant workman is declared as illegal. The workman shall be deemed to be continuing in his service after 28.07.2016 till the time of superannuation.

Parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 559.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 10/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2021 को प्राप्त हुआ था।

[सं. एल-20012/405/2000-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 559.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 10 of 2001) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 09.08.2021.

[No. L-20012/405/2000-IR(CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 10/2001

Employer in relation to the management of Ramkanali Colliery, Katras Area-IV of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand Industry:- Coal

Dated 28.07.2021

AWARD

By Order No.L-20012/405/2000 (C-I) dated 12/01/2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Ram Kanali Colliery of M/s. BCCL in dismissing Sri Bhanu Bouri from the service of the Company w.e.f. 22.3.99 is justified? If not, to what relief is the concerned workman entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter regd. notice was issued to the parties but even then no one appeared on behalf of the workman/union. Now the Case is pending since 05/02/2001 and workman/union is not appearing before Tribunal. So, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 560.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 11/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2021 को प्राप्त हुआ था।

[सं. एल-20012/149/2007-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 560.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 11 of 2008) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 09.08.2021.

[No. L-20012/149/2007-IR(CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 11/2008

Employer in relation to the management of Kustore Area of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : Sri Anil Kr. Singh, Advocate

For the workman. : Sri R.R. Ram, Representative

State : Jharkhand. Industry:- Coal

Dated 28.07.2021

AWARD

By Order No.L-20012/149/2007 (IR(CM-I)) dated 03/03/2008 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Hurriladih Colliery of M/s. BCCL in dismissing the services of Sh. Krishna Bhuia, Miner Loader w.e.f. 22.08.2006 is justified and legal? If not, to what relief is the concerned workman entitled"?

2. After receipt of the reference, both parties were noticed but the workman/union didn't appear before the Tribunal. However the management has appeared in this case. Thereafter again regd. notice was issued to workman/union and the said notice returned with endorsement of "Unclaimed". Further in course of hearing of the case, the Jt. General Secretary of B.M.U. Sri R.R. Ram is present on 07/04/2021 and informed that workman/union is not interested in contesting the case. It is felt that the workman/union has lost its interest in this matter. Hence "No dispute" award is passed. communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 561.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. – 1, धनबाद के पंचाट (संदर्भ संख्या 19/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2021 को प्राप्त हुआ था।

[सं. एल-20012/19/2008-आईआर (सीएम-I)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 561.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 19 of 2008) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 09.08.2021.

[No. L-20012/19/2008-IR(CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 19/2008

Employer in relation to the management of Kustore Area of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated 27.07.2021

AWARD

By Order No.L-20012/19/2008 (IR(CM-I)) dated 28/04/2008 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Ena Colliery under Kustore Area of M/s. BCCL in not providing dependent employment to Sh. Biren Hari, dependent son of Late Saraswati Harin, Sweeper, under the provisions of NCWA is justified and legal? If not, to what relief is the dependent son of the concerned deceased employee entitled?"

2. After receipt of the reference, both parties were noticed but neither the workman/union nor the management appeared before the Tribunal. Thereafter registered notice was issued to the workman/union which returned with endorsement of " Insufficient Address". Now the Case is pending since 05/05/2008 and workman/union is not appearing before Tribunal. So, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 562.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 49/2004) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2021 को प्राप्त हुआ था।

[सं. एल-20012/259/2003-आईआर (सीएम-I)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 562.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Dhanbad (Ref. No. 49 of 2004) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 09.08.2021.

[No. L-20012/259/2003-IR(CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 49/2004

Employer in relation to the management of Civil Engineering Dept., Koyla Nagar of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer.

Appearances:

For the Employers : Sri Naresh Prasad, Advocate

For the workman. : Sri D. Mukherjee, Advocate

State : Jharkhand. Industry:- Coal

Dated 29.07.2021

AWARD

By Order No.L-20012/259/2003-IR (C-I) dated 07/06/2004 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Civil Engineering Deptt., of M/s. BCCL, Koyla Bhavan in demoting Sh. S.K. Roy, Electrician form Cat-VI to Cat-V vide order of 30/21.1.2001 although he was duly promoted through DPC-cum-Selection Committee to Cat-VI vide order dated 22.8.88 and upgraded to Tech &Sup. Grade-C under SLU w.e.f. 1.1.97 is just, fair & legal? If not, to what relief is the concerned workman entitled?"

2. After receipt of the reference, both parties were noticed and both the parties appeared for certain dates but subsequently workman left taking step in this case and the notice of the workman/union returned with endorsement "Insufficient Address". Further in course of hearing of the case, the Learned Counsel of Workman/Union Sri D. Mukherjee has informed that workman/union is not interested in contesting the case. In view of such it is felt that the workman/union has lost its interest in this matter. Hence "No dispute" award is passed. communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 563.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 59/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2021 को प्राप्त हुआ था।

[सं. एल-20012/7/2005-आईआर (सीएम-I)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 563.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 59 of 2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 09.08.2021.

[No. L-20012/7/2005-IR(CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1,DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 59/2005

Employer in relation to the management of Kustore Area of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : Sri Anant Mohan Sinha, Advocate

For the workman. : None

State : Jharkhand Industry:- Coal

Dated : 28.07.2021

AWARD

By Order No.L-20012/7/2005-IR(C-I) dated 19/07/2005 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Hurralidih Colliery of M/s. BCCL in dismissing Sri Kisto Besra, Miner from the services w.e.f. 10.7.2004 is justified? If not, to what relief is the concerned workman entitled?"

2. After receipt of the reference, both parties were noticed but the workman/union didn't appear before the Tribunal. However the management has appeared in this case. Thereafter registered notice was issued to the workman/union which returned with endorsement of "unclaimed". Now the Case is pending since 22/08/2005 and workman/union is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 564.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 63/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2021 को प्राप्त हुआ था।

[सं. एल-20012/97/2008-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 564.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 63 of 2008) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 09.08.2021.

[No. L-20012/97/2008-IR(CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 63/2008

Employer in relation to the management of P.B. Area of M/S. B.C.C.L.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand Industry:- Coal

Dated 28.07.2021

AWARD

By Order No.L-20012/97/2008 (IR(CM-I)) dated 08/12/2008 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"(i) Whether the action of the management of Balihari Colliery of M/s. BCCL in not regularizing the services of Shri Om Prakash Modak as UG Munshi is justified and legal? (ii) To what relief is the concerned workman entitled and from what date?"

2. After receipt of the reference, both parties were noticed but neither the workman/union nor the management appeared before the Tribunal. Thereafter registered notice was issued to the workman/union which returned with endorsement of "unclaimed". Now the Case is pending since 22/12/2008 and workman/union is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 565.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 81/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2021 को प्राप्त हुआ था।

[सं. एल-20012/59/2005-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 565.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 81 of 2005) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 09.08.2021.

[No. L-20012/59/2005-IR(CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 81/2005

Employer in relation to the management of Incline Mines, Bhowra (S) of M/s. BCCL.

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand. Industry:- Coal

Dated : 28.07.2021

AWARD

By Order No.L-20012/59/2005- IR(C-I) dated 13/09/2005 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Incline Mine, Bhowra (S) of M/s BCCL in dismissing Sri Sadhan Hari working as Miner/Loader w.e.f. 3.3.04 is justified? If not, to what relief is the concerned workman entitled?"

2. After receipt of the reference, both parties were noticed and workman/union appeared for certain dates, however the management didn't appeared in this Tribunal, subsequently workman/union left appearing before this Tribunal. Thereafter again three regd. notices were issued and the notice of workman/union returned with endorsement that "there was no knowledge of recipient". Now the Case is pending since 26/09/2005 and workman/union is not appearing before Tribunal. so, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 566.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं.–1, धनबाद के पंचाट (संदर्भ संख्या 118/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.08.2021 को प्राप्त हुआ था।

[सं. एल- 20012/84/2001-आईआर (सीएम-1)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 566.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal-cum-Labour Court No.1, Dhanbad (Ref. No. 118 of 2001) as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s. BCCL and their workmen, which was received by the Central Government on 09.08.2021.

[No. L- 20012/84/2001-IR(CM-I)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D.Act. 1947

Reference: No. 118/2001

Employer in relation to the management of Kustore Area of M/s. BCCL

AND

Their workman

Present: Shri Dinesh Kumar Singh, Presiding Officer

Appearances:

For the Employers : None

For the workman. : None

State : Jharkhand Industry:- Steel

Dated : 28.07.2021

AWARD

By Order No.L-20012/84/2001-C-I dated 22/05/2001 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub –section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of BCCL, Kustore Area in dismissing Shri Satyapado Ram, Miner Loader, from the services of the company w.e.f. 31.3.99 is legal, justified and proper? If not to what relief is the workman entitled?"

2. After receipt of the reference, both parties were noticed and both parties appeared for certain dates, but subsequently both of them left appearing before this Tribunal. Thereafter regd. notice was issued to the parties but even then no one appeared on behalf of the workman/union. Now the Case is pending since 20/06/2001 and workman/union is not appearing before Tribunal. So, it is felt that workman/union has lost its interest in this matter. Hence No Dispute Award is passed. Communicate.

D. K. SINGH, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 567.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कानपुर के पंचाट (संदर्भ सं. 35/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2021 को प्राप्त हुआ था।

[सं. एल-12011/53/2007-आईआर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 567.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 35/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 10.08.2021.

[No. L-12011/53/2007-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT KANPUR

ID NO. 35 of 2007

In the matter of Industrial Dispute

Between :

The Secretary,
Punjab National Bank Workers Union,
U.P Camp Office, 128/F/75, Kidwai Nagar,
Kanpur (U.P)-208011

Versus

The Senior Regional Manager,
Punjab National Bank
Regional Office, Birhana Road,
Kanpur (U.P)-0

AWARD

This Tribunal has been called upon to answer the reference mentioned in the schedule below as stated in the letter no. L-12011/53/2007-IR(B-II) dated 23/08/2007.

"Whether the action of the management of Punjab National Bank in removing Shri Dinesh Kishore Srivastava from services of the bank w.e.f 31.07.2004 on the basis of findings of Enquiry officer dated 02.06.2004 is legal and justified? If not, what relief the workman concerned is entitled to?"

After receipt of reference the union of the claimant workman submitted the claim petition. The averments made in claim statement may be summarized as follows:-

Claimant Shri Dinesh kishore Srivastava (Here-in-after stated in short as claimant) was serving as staff in the branch of Punjab National Bank(Here-in-after stated in short as P.N.B), Elgin mills branch and on 25.03.2003 the Branch Manager of P.N.B, Elgin mills branch issued one chargesheet against the claimant. It is stated that the branch manager was vested with no authority to sign and issue chargesheet against the bank clerical staff of the cadre of the claimant. The said charge sheet was adopted by the disciplinary authority without application of mind and the said charge sheet became the basis for the departmental enquiry. The enquiry was started against the claimant on main charges. The charge no.1 is that one Rajesh kushwaha was sanctioned a loan of Rs 95,000/- under PMRY scheme on 12.03.2000. The claimant was working as a loan clerk. The charge against the claimant was that he had not filled all the columns of loan application. Charge no. 2 against the claimant is that on 04.01.2002 the claimant had received Rs 45,000/- from customer from Shiv Narayan Singh but the claimant had retained the said amount without crediting the said amount to the account of depositor Shiv Narayan Singh. It is alleged that the claimant had issued a cash receipt voucher with his signature in respect of deposit to be credited to account no.9270 of the P.N.B, Elgin mills branch. The charge no.3 against the claimant is based on the allegation that the claimant had availed the loan of Rs 2 lakh on 06.09.2001 from the Oriental Bank of Commerce and later Rs 3 lakh from the State Bank of India, Naveen market branch Kanpur on 18.03.2002 without informing the employer Bank. It is alleged that the claimant had forged the signature of the manager of the P.N.B namely O.P Srivastava for the purpose of preparation of no objection certificate to be submitted at the S.B.I branch Naveen market, Kanpur. The claimant was held guilty of charge no. 2. The enquiry officer submitted the enquiry report , the disciplinary authority was the senior regional manager of the P.N.B who after perusing the enquiry report and after giving personal hearing to the claimant on 29.07.2004 and after consideration of his written submission dated 28.07.2004 passed the order for removal of claimant from service with superannuation benefits. The disciplinary authority (Here-in-after stated in short as D.A), as per para 6 of bipartite settlement held the claimant dis-entitled for any salary/ wages for the period of suspension. Later appeal was preferred by the claimant before the Dy. General manager, zonal office Lucknow who was the appellate authority. The appellate authority rejected the appeal preferred by claimant affirming the punishment of removal of the claimant from service with superannuation benefits. After receipt of the reference the claimant challenged fairness and legal sustainability of the departmental proceeding on the ground of non-observance of rules of Natural justice. Further it has been contended on behalf of the workman that The chargesheet dated 25.03.2003 was issued against workman Dinesh Kumar Srivastava in gross violation of the bank personnel division circular no. 1012 dated 13.04.1987. It was stated in the claim statement that it was regional manager of regional office who was empowered to initiate disciplinary action. At the time of suspension the workman Dinesh Kumar Srivastava was working at the branch of Ellgins Mills and he was placed under suspension by the

branch manager of the branch which amounted to gross violation of the bank circular. It is further stated that the issuance of chargesheet dated 25.03.203 was without jurisdiction and was wholly arbitrary. Since the disciplinary authority had never approved the action of the branch manager the entire disciplinary action against the workman from the stage of suspension till passing of appellate order was without jurisdiction and illegal. It was alleged that the enquiry officer appointed to conduct an enquiry had done the enquiry in a biased manner without assigning proper reasons for the conclusions. In the claim statement it was raised as to how officers of the bank sanctioned the loan on incomplete and defective application. With regard to charge no. 2 it has been averred that it was nearly impossible that an employee who had put 26 years of unblemished service to the bank would indulge in the illegal retention of Rs 45,000/-. It was pointed out that once the customer filed one FIR with the police and the Hon'ble Court of Law entertained the FIR there was no urgency on the part of management to proceed against the workman. It was stated the photocopy of the counter foil of the cash receipt should not have been received as evidence. In the claim statement it has been submitted that the complainant was running a group of brokers and he had tried to influence the workman who was then serving as loan clerk by unfair means. The branch of the bank was unoperational on 04.01.2002 due to strike. The presenting officer had said that on 04.01.2002 the branch of the bank was closed. It was further stated that the enquiry officer has assumed the role of super handwriting expert which is not permissible in the eye of law. It has not been clarified as to how the loan was advanced by State Bank of India and Oriental Bank of Commerce. With regard to housing loan availed from erstwhile New Bank of India it had never been explained as to how after a long lapse of time the allegation was opened up. It is stated that misutilization of housing loan at best may be treated as civil liability.

The written statement was submitted on behalf of the bank with averments which maybe concisely be reproduced as follows:-

It is submitted that the incumbent-incharge of each office is empowered to issue and serve chargesheet upon the defaulting workman as they have been so authorized by the Chairman and Managing Director of the bank in terms of Para 14 of BPS dated 10.04.2002, provisions of which have been circulated in para-2 (i) of Schedule -2 to HRD Circular NO, 86 dated 05.06.2002. There is no bar on the Presenting Officer to appear as witness in the enquiry against the workmen. The only requirement is that he should depose as First witness and thereafter evidence of other witnesses should be recorded. The union has given no reasons how the approach of the enquiry officer, Disciplinary Authority and Appellate Authority are not in accordance with the rules of natural justice and rules governing the Disciplinary action held against the workmen. No illegality and irregularity was committed by the Enquiry officer by allowing the Presenting officer to appear as witness in respect of charge no. 2. The evidence given by the Presenting Officer can be verified from the records of the enquiry proceedings and needs no comment.

It is an established practice that a loan clerk has to see the loan documents including the application and ensure that the same are properly filled in and he cannot be absolved from his liability to do so even after sanction of loan. The charge No.1 was proved through exhibits ME-6/1 to 6/14 whereas defence has not submitted anything to disprove contrary to the allegation.

The Disciplinary Authority and the enquiry officer have not failed to apply their mind as to why the workman would indulge into an act of defrauding the bank for a meagre amount of Rs 45,000/- when the workman has himself accepted vide his letter dated 10.03.2003(ME-4/1) addressed to the Vigilance Officer, Zonal Office, Lucknow that the amount of Rs 45,000/- was accepted by him from Shri Shiv Narayan Singh on 04.01.2002, the day of strike and receipt was given by him. The workman went before Hon'ble High Court by filing a writ petition NO. 56063 of 2003 praying to stay the departmental enquiry till conclusion of criminal trial but the Hon'ble Court vide order dated 19.12.2003 did not allow the prayer as the charge did not involve any complicated question of fact and law. It was further held that this charge had both the criminal element and the element of misconduct in discharge of official duty. Hence the action of the disciplinary authority to continue the departmental proceedings was justified. As regards the presence of the appellant on 04.01.2002 in the branch premises the Presenting Officer not only submitted the complaint of Shri Shiv Narain Singh, the account holder of Saving Bank a/c no. 9270 (ME-3/2) and photocopy of the receipt of the pay in slip for deposit of Rs 45,000/- (ME-3/3) but has presented Shri Shiv Narain Singh as management witness (MW-3) whose deposition was recorded on page no. 57 to 78 of the enquiry register. The version of the workman for being out of station due to death of his brother is not reliable on the grounds because on perusing the photocopy of the newspaper cutting dated 05.01.2002 annexed with the appeal, it has been observed that his brother was first seen as dead by his landlord in the evening of 04.01.2002 whereas the complainant MW-3 has complained for having handed over the cash to the workman during day time of 04.01.2002.

The Branch Manager (MW-5) during his cross examination at page No.79 of the enquiry register, has clarified that despite being strike call by a particular Union, the branch premises was open on 04.01.2002 for internal work. Since no customer transaction was carried out on that date, the branch was considered as closed on the day. The staff members, other than those belonging to the Union, which had given the strike call were present in the branch and marked their attendance in the attendance register of the branch. The workman was

amongst those employees who were on strike but was present in the branch and the complainant Shri Shiv Narain Singh was also seen by him in the branch. This clarification, read with the version of the workman vide letter dated 10.03.2003 (ME-4/1), itself proves that the amount was received by him on 04.01.2002 in the branch premises but not deposited by him in the account of the account holder. Further, the workman did not submit any evidence of having returned the amount to Shri Singh in the presence of two witnesses as stated by him in his letter dated 10.03.2003.

Being a permanent employee of the bank, doing any act to deceive the other banks or doing default in repayment of loan taken from other bank are certainly the acts which may be considered as tarnishing the image of the bank and prejudicial to its interest which have been clearly been defined as misconduct under Para 5(j) of Bipartite Settlement dated 10.04.2002. The workman has accepted statement of the Presenting Officer (page 98-99 of the enquiry proceeding register) for having handed over the NOC to SBI authorities for raising the housing loan. The fact that the NOC was forged in the opinion of the Handwriting expert Shri Quazi Mohd. Zunaid which was supported by the evidence of Shri OP Srivastava, Asstt. Manager of the branch, is sufficient to prove the charge against the workman.

By order dated 17.02.2021 of this Tribunal the fairness of the departmental enquiry against the delinquent workman (Dinesh Kishore Srivastava) was upheld. The points that survive for adjudication are as follows:

1. Whether the punishment of removal of the workman from the services of the PNB as passed by the disciplinary authority with superannuation benefits as would be due otherwise under the Rules and regulations prevailing at the relevant time and without disqualification from future employment was shockingly disproportionate. The claimant workman was disentitled for any salary or wages etc. for the period of suspension. The above stated punishment on the claimant workman was otherwise affirmed by the Appellate Authority.

At this point it is pertinent to state that after holding enquiry the Enquiry Officer had reached the conclusion that the charge of illegal receiving of cash of Rupees Forty five thousand from bank customer Shiv Narayan Singh and subsequently retaining the said cash amount without depositing the amount in the savings Bank account of Shri Shiv Narayan Singh was duly proved against the claimant workman.

Shiv Narayan Singh a customer of P.N.B made allegation that on 04.01.2002 he had given cash of Rs. 45,000/- to delinquent workman D.K Srivastava then the clerical staff of P.N.B, Kanpur for depositing the said amount in his account no. 9270. Plea of Shri D.K Srivastava the delinquent is that on that day i.e 04.01.2002.there was strike by employees of P.N.B and he was on strike away from duty for which the amount could not be deposited in the account. It is further pleaded by the delinquent CSE that on that day his brother expired for which he had to go to his native place for attending a funeral ceremony and as such he cannot be fastened with any criminal misappropriation. For buttressing the stand the delinquent CSE has referred to the deposition of Shiv Narayan Singh before the Court of the ACMM-7, Kanpur Nagar on 06.07.2013 in suit no. 3385/12. It may be correct that Shiv Narayan Singh as a witness in suit no. 3385/12 deposed that Dinesh Kishore had given the receipt of deposit to another clerk of the branch then on duty and he was unaware as to what was done with deposit slip but Shiv Narayan Singh has categorically deposed that he had gone to the branch manager to show the original receipt of deposit. At this stage it appears pertinent and proper to refer to the statement of Shri Shiv Narayan Singh MW3 made before the enquiring officer.

MW3 has emphatically stated before the enquiry officer that on 04.01.2002 during day hours at the P.N.B, Elgin Mills branch he had given the amount to Mr. Srivastava (implying workman D.K.Srivastava) for depositing the same in his saving banks account and since Sri Srivastava (implying the)workman had not deposited the said amount doing deceit against him. He had complained against him, this part of the deposition of MW3 (Shri Narayan Singh) has not been shattered even by cross-examination by the defense representative on behalf of the C.S.E (Chargesheeted Employee the workman).

Disputes before the Consumer Dispute Redressal Forum and in the departmental enquiry are different in nature and the statement of a witness before the Consumer Dispute Redressal Forum in consumer Case No.588 of 2003 cannot be read as decisive evidence in departmental enquiry.

From cumulative reading of whole testimony deposed by MW3 and MW5 the then branch manager, it is clear that delinquent workman had received the cash of Rs 45,000/- inside the premises of PNB, Kanpur which was given to him by Shiv Narayan Singh for the purpose of depositing in his account no. 9270. MW3 has also deposed that he had deposited the cash with Dinesh Kumar Srivastava who was also known as an employee of P.N.B. At this point it appears relevant to state that Shri D.K Srivastava had issued P.N.B receipt voucher (at paper no. 13/33) to Shiv Narayan Singh in token of receipt of cash. Had the cash been received in personal capacity the P.N.B receipts voucher (copy marked ME 3/3) would not have been issued by him.

When delinquent workman has admitted to have received the amount Rs 45,000/- from MW3 and MW3 has asserted to have paid the said amount on examination before the enquiry officer in enquiry proceeding

charge does not fail with subsequent production of some documents showing testimony of Shri Shiv Narayan Singh before the learned A.C.M.M, Kanpur. With regard to charge no. 1 it has been concluded by the Enquiry Officer that delinquent workman Dinesh Kumar Srivastava had not filled in the blanks of the register maintained for release of loan, With regard to charge no. 3 it has been concluded by the Enquiry Officer with his reasoning that the delinquent workman has furnished false no objection certificate purporting to have been issued by the Branch Manager (Manager O.P Srivastava). This conclusion of the Enquiry Officer though has been challenged by the delinquent workman. With evidence of another handwriting expert the evidence of the handwriting expert examined on behalf of the delinquent may not shatter the conclusion arrived at by the Enquiry Officer. After all, in departmental enquiries strict rule of proof beyond reasonable doubt is not followed. It has been well found by the Enquiry Officer that the delinquent workman had availed a housing loan from erstwhile New Bank of India showing one agricultural land not owned by him. It has not been concluded that the delinquent workman was availing loans from different sources and was living beyond means. Though it has been contended on behalf of the delinquent workman that P.N.B had not suffered any loss due to availing of loans by the delinquent workman it cannot be ignored that the management of the Bank in their wisdom for smooth operation of banking business formulated discipline for availing loans by furnishing proper no-objection certificate for all the staff of the bank.

In the case of Deputy General Manager and others Vs Ajay Kumar Srivastava arising out of SLP(C) No(s). 32067-32068 of 2018) it is observed by Hon'ble Supreme Court in the following words:-

> "Before we conclude, we need to emphasize that in banking business absolute devotion, integrity and honesty is a sine qua non for every bank employee. It requires the employee to maintain good conduct and discipline and he deals with money of the depositors and the customers and if it is not observed, the confidence of the public/depositors would be impaired. It is for this additional reason, we are of the opinion that the High Court has committed an apparent error in setting aside the order of dismissal of the respondent dated 24 th July, 1999 confirmed in departmental appeal by order dated 15th November, 1999."

In view of the foregoing discussions it is held that the order of removal of workman from service with superannuation benefits as passed by the disciplinary Authority upheld by the appellate authority is free from any fault, the order of removal of the delinquent Workman (Dinesh Kishore Srivastava) from service under the PNB is not shockingly disproportionate warranting any interference by this Tribunal. The reference is answered accordingly.

Parties are left to bear their respective costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 568.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार लाइफ इंशोरेंस कोरपोरेशन आफ इंडिया लि., के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, धनबाद के पंचाट (संदर्भ सं. 16/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2021 को प्राप्त हुआ था।

[सं. एल-17011/7/1998-आईआर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 568.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 16/2016) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Life Insurance Corporation of India Ltd., and their workmen, received by the Central Government on 10.08.2021.

[No. L-17011/7/1998-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Dr. S. K.Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947

REFERENCE NO 16 OF 2016

PARTIES:

Sri Ratan Kumar Thakur ,
S/o Shri Adhik Lal Thakur,,
At: Bhagwatipur, PO: Lattipur, via Bihpur
BHAGALPUR 853201 (BIHAR)

Vs.

The Sr. Divisional Manager,
Life Insurance Corporation of India Ltd.,
BHAGALPUR (BIHAR)-82001.

Order No. L-17011/7/1998-IR(B-II) dt 18.01.2016.

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr. M.A. Khan, Ld. Advocate

State : Bihar Industry : Insurance

Dated, Dhanbad, the 29th April, 2021

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their **Order No. L-17011/7/1998-IR (B-II) dt 18.01.2016.**

SCHEDULE

"Whether Sh.R.K.Thakur has worked for 240 days or more with the Management of LIC of India, if so, whether the action of the Management of LIC of India in terminating his services w.e.f. 12.04.1996 is justified? If not, to what relief the workman is entitled to?"

2. On receipt of the **Order No. L-17011/7/1998-IR (B-II) dt 18.01.2016** of the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, it was registered as Reference case No. 16 of 2016 on 01.02.2016 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

3. The Reference Industrial Dispute was finally heard on 06.04.2021 to deal with the matter of filing Written statement of Claim and for final order virtually on being default of the workman concerned (Petitioner) nor nor any one of the Management was found present on call Nor did the long awaited Written Statement of claim filed before the Tribunal to proceed further over hearing. Whereas, Written Statement of Claim on the part of the workman (petitioner) should have been filed within fifteen days of the receipt of the reference who raised the dispute as stated in the Order of Reference from Government of India, which reads as follows:

"**The Parties raising the dispute shall file a statement of claim complete with relent documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of this order of reference and also forward a copy of such statement to each one of the opposite parties involved in this dispute under rule 10(b) of the Industrial Disputes (Central), Rules, 1957**. "

4. The proceedings of the Case record came to a grinding halt and persistent pressure by the way of adjournments and Notices appears to be of no use, a move squarely rest with the workman. Unarguably the case appears to be moving at snail's pace over the one step of filing the written statement of claim. All that was

stated that parties concerned had not appeared before the Tribunal far to speak of filing of written statement of claim. except appearance of Shri M.A. Khan, Ld. Advocate on behalf of the O.P./Management on 21.10.2019 for filing Wakalatlama and on 05.01.2021 to submit that Hon'ble Supreme Court, has passed order for maintaining status quo in the instant matter. However he failed to file copy of any such order of the Apex Court despite direction of the Tribunal for the same..In such a situation the Tribunal cannot continue with the proceeding on its own due to lack of workman's interest to file Written Statement of claim or even to represent. It is summed up that full natural justice has been provided to the workman concerned to come out with Written Statement of claim providing ample opportunity during the course of hearing of the instant case even by issuance of the Notices.

5. In course of hearings the case adjournments were granted on 26.04.2016, 27.09.2016, 24.09.2019, 05.01.2021, besides being placed for taking steps on various dates. Appearance from the O.P. /Management does not hold good so long the workman himself who raised the dispute do not file legitimate statement of claim before Tribunal for adjudication to let them be countered by the O.P./Management .

6. The subject matter of the Industrial Dispute under Reference relates to termination of services of the workman concerned Shri R.K.Thakur , who stated to have completed 240 days or more with the Management of LIC, w.e.f. 12.04.1996 seeking thereby relief by praying to quash alleged termination and thereby seeking relief.

7. Upon a careful consideration of materials brought on record and the findings based on facts, it has been absolutely clear that the Petitioner/workman has not taken recourse to proceed with the case although number of notices was served upon even after more than five adjournments granted over the same issue. So prima facie it appears no basis on the subject matter under Reference. Such being the position the Tribunal finds no scope to exercise its jurisdiction. In the light of above fact and circumstances it has come to conclusion that the issue on which the case had been raised, in real terms has diluted and no more in existence. The dispute is disposed of accordingly due to sheer reluctance of the workman under the Industrial Dispute to come forward and as such no longer does have grievance to be redressed from the Management and so no relief can be awarded of any nature. Therefore, no relief is awarded in the instant case.

Dr. S. K.THAKUR, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 569.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार देना बैंक के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, धनबाद के पंचाट (संदर्भ सं. 84/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2021 को प्राप्त हुआ था।

[सं. एल-12012/45/2005-आईआर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 569.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2005) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Dena Bank and their workmen, received by the Central Government on 10.08.2021.

[No. L-12012/45/2005-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT : Dr. S. K.Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D.Act., 1947

REFERENCE NO 84 OF 2005

PARTIES:

Sri Ratm Chandra Paswan,
Vill & P.O. Khabra,
Gachuli Tola
MUZAFFARPUR (Bihar)

Vs.

The Asstt. General Manager,
Dena Bank, 225-C,
A.J.C.Bose Road, Alpee Court,
Kolkata -700020.

Order No. L-12012/45/2005-IR (B-II) dt. 22.07.2005

APPEARANCES :

On behalf of the workman/Union : Mr. D. Mukherjee, Ld. Advocate

On behalf of the Management : Mr. D. K.Verma Ld. Advocate

State : Bihar Industry : Banking

Dated, Dhanbad, the 17th February, 2021

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their **Order No. L-12012/45/2005-IR (B-II) dt. 22.07.2005.**

SCHEDULE

"Whether the claim of Shri Ram Chandra Paswan that he was engaged continuously on daily wages during the period from 16.12.1999 to 05.04. 2004 by the Management of Dena Bank is correct? If so, whether the action of the Management in terminating the services of Shri Ram Chandra Paswan is legal and justified and what relief is the disputant entitled?"

2. On receipt of the **Order No. L-12012/45/2005-IR (B-II) dt. 22.07.2005** of the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, it was registered as Reference case No. 84 of 2005 on 17.08.2005 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

3. On registration of the Reference on 19.08.2005, the case started in motion for proceeding providing opportunity to file the Written Statement annexing documents in support of claim by issuing notice on 02.09.2005 to both sides of the parties under Reference. The case started rolling out for proceeding to let the Sponsoring Union /workman file the claim. The workman concerned filed the Written Statement of claim on 02.09.2005 whereas the O.P. Management filed the counter claim with rejoinder on 08.08.2006 by the Ld.Advocate Mr. D. K.Verma, appearing on behalf of the O.P./Management. The case went on merit with filing the rejoinder as part of the Written Statement of claim to make it complete. Similarly the workman also filed the rejoinder on 26.12.2007.On completion of claim /counter claim with rejoinders by both sides the proceeding switched over to lead evidence which was pending on the part of the workman and closed at his prayer but the O.P./Management failed to get the evidence part accomplished even after availing several adjournments. So finally hearing was concluded on 18.01.2001 at Camp Court, Patna as being originally belonging to Bihar State declaring the case matter reserved for award/order as the case may be.

4. The facts and circumstances leading to said dispute as narrated by the workman in the Written Statement of Claim are that:

(i) The workman concerned had been working regularly and continuously in permanent nature of jobs under direct control and supervision of the officials for more than eight hours a day. He was

performing the regular and continuous nature of jobs of sweeping, cleaning and also issuing cheque Book Pass Book to the customers, stitching of bundles of note, even entering the same in Bank register and other sundry jobs., as claimed by him).

(ii) The O.P./Management however exploited the poor workman by paying Rs. 25/ per day which was subsequently hiked to Rs. 60/- in the year 2003.Thogh the workman /petitioner represented before the O.P./Management time and again for placing his service in regular scale of pay but to no avail.

(iii) Amid rampant corruption at the Branch and particular in sanctioning loan the Bank Officials made the workman concerned scape goat. Though the workman had been working continuously since 16.12.1999 till the O.P./Management terminated the service of the petitioner by stopping for duty w.e.f. 05.04.2004 without assigning any reason thereof and issuing any charge sheet/notice.

(iv) Vehement protest against the arbitrarily termination of service did not fetch desired result.

(v) Finding no alternative on the issue, the subject matter was taken up with the ALC (C), Patna for conciliation proceeding. During conciliation proceeding Management's plea was that workman in collusion with one had managed to get NSC of Rs. 40,000, whichs tood pledged. Due to the adamant attitude of the Management the conciliation proceeding ended in failure and birth of the Reference after the matter being referred for adjudication .

(vi) The alleged termination is neither legal nor justified as the claim of the petitioner that he had worked from 16.12.1999 to 05.04.2004 is correct. So Management action of termination the service of them petitioner without being provided opportunity of hearing or affording any opportunity without conducting any enquiry was illegal arbitrary, against the principle of natural justice and vindictive in nature and smack of anti-labour policy in violation of statutory provision of law.

(vii) So the workman's demand is to reinstate the petitioner with full back wages and other attendant benefits.

5. Whereas the following is the contra plea of the O.P./Management as asserted by the O.P./Management that the present reference is not maintainable either in law or in fact.

(i) The workman Shri Paswan was engaged by Muzaffarpur Branch under Kolkata region on casual basis only for carrying out certain odd and miscellaneous jobs of the casual nature. So he was paid proportionately for doing the same without any employer and employee relationship. Hs services were restricted to exigencies to need of the Bank. The Bank being nationalized one under the control of Government of India has a Recruitment Rule for subordinate cadre taking into aspect of the reservation policy. Requirement of Employment Exchange Act Norms, educational qualifications and age etc as prescribed under Rules. The Bank as per Recruitment procedure has to call the candidates from the Distt Employment Exchange. Candidates who fulfill the said norms and after interview from those panels are drawn to be engaged whenever there is a leave vacancy/vacancy of temporary nature in subordinate cadre. Over a period of time on gaining seniority as above, they are entitled to be absorbed permanent vacancies as and when they occur.

(ii) That the workman has never passed through the said recruitment norms as such he was never recruited as subordinate staff in the Bank. It is stated that Shri Paswan was engaged only as casual labour as per exigencies and need of the Branch. His services were being utilized in exigencies purely on temporary basis on daily wage basis. He was paid proportionately for doing the same.

(iii) In this context the O.P./Management referred the various statutory rulings of the Apex Hon'ble Court as details below:

1. Himansu Kumar Vidyarthi & others V/s State of Bihar & Others (LLJ,1998)

2. State of Haryana V/s Jasmeer Singh & Others (JT.1996(10)SC 876)

3. A land marked Judgment delivered on 10.04.2006 in the matter of Secretary, State of Karnataka & Ors. V/s Umadevi & Ors.

(iv) Further to add that the petitioner was never recruited as a Subordinate Cadre or in permanent workman against permanent vacancy rather was appointed on temporary basis on daily wage basis only for carrying out certain odd and miscellaneous jobs of casual nature. and went on categorically denying all the allegation leveled against the O.P./Management (Dena Bank).

(v) Over the issue of implicating the workman in the charge of forgery, the O.P./Management stated that petitioner as a casual workman in collusion with one Shri Shashi Ranjan tried to dupe the Bank by forging the signature of Asstt. Post Master in National Savings Certificate (NSC)

(vi) So he doesn't not fall under the category of regular employee of the Bank as he was neither sponsored by Employment Exchange and has not under gone the process of selection. Nor had his name appeared in the approved panel of the Bank. So he had no legal statutory right or engagement every day. So the question of conducting any enquiry does not arise.

(vii) Lastly the O.P./Management reiterated its stand the claim of the Respondent is nether legal nor justified. Nor is he entitled to any relief.

6. In their rejoinders both the parties under Reference categorically denied with para-wise rebuttal of claims of each other opposite parties stating their claims as just , proper and in accordance with law.

7. In support of workman's contention and to substantiate the facts the following documents were produced before the Court during the in course of deposition by the workman Shri Ram Chandra Paswan as WW-I On 27.09.2013.

(i) Daily Wages Payment Vouchers in three copies marked as Ext. W.-I series as for Rs.740/, W-1/1 for Rs. 740/- and W-1/2 for Rs.345/-.

(ii) Xerox copy of letter dt.07.11.2003 of the Dena Bank issued by Shri Vijay Kumar Ojha of the Dena Bank Branch ,Muzaffarpur to the Asstt. General Manager, Dena Bank, Kolkata for regularizations of workman concerned marking as Ext.W.2

(iii) Xerox copy of the application dt.02.072003 issued by workman to the Assistant General Manager for regularization marked as Ext.W-2/1

(iv) Xerox copies of V.P. Articles Receipt, of the Post Office, Head Office,Muzaffarpur/Intimation of the Transport Corporation of India Ltd marked as W.-3 series (with objection) bearing signatures and counter singed by Shri Dinesh Kumar Singh, Br. Manager, Dena Bank,Muzaffarpur.

8. The O.P./Management did not file any documentary evidence in support of the claim

9. At evidence stage workman Ram Chandra Paswan WW-I on 27.09.2013 in course of deposition admitted that he was not appointed by following the statutory mandatory provision of law nor was he given any offer /appointment letter by the Bank authority. But the workman brought on record three sets of documents in Ext.W-1,W-2 and W-3 series showing his involvement either direct and indirectly in the discharge of the workman assigned by the Bank as some documents bearing signature of the workman with countersigned by official of Bank Authority .The letter of the Branch purportedly written Branch Manager, Dena Bank Authority. The letter of the purportedly written Branch Manager ,Dena Bank, Muzaffarpur Branch was also filed as a testimony to substantiate workman's statement in his deposition about his working as daily wages worker .Though the charge of fraud over which workman .as claimed to have terminated was never adduced nor was it proved by either side of the party under reference .

10. From the submission made from both sides along with the documents and cited judgments of the Apex Court by the Management side following are observed:

(i) The concerned petitioner Sri Ram Chandra Paswan was engaged by the Opposite Party/Management, Dena Bank on opening of its Branch at Muzaffarpur, Bihar temporarily on casual basis on day to day requirement basis.

(ii) From the copies of the documents by the workman exhibited during witness purportedly to be vouchers for payments dated 09.09.2003,01.10.2003,and 02.11.2001 only to be proved that he was paid on certain occasions for certain miscellaneous work taken by the Management from the concerned workman. From these vouchers working continuously for the period as claimed by the workman cannot be proved.

(iii) From the Exhibit W-2 purportedly be letter from Muzaffarpur Branch of Dena Bank dated 27.11.2003 to Asstt. General Manager, Kolkata Region, Kolkata it transpires that hiring of concerned workman Shri Ram Chandra Paswan on daily basis was discontinued upon resuming of one Mr. Rajendra Parasad Rajak as Full Time Sweeper in that Branch. However certain details about the concerned workman has also been mentioned for information without any recommendation from Muzaffarpur Branch. It shows that hiring of services of the workman by the Dena Bank, Muzaffarpur Branch was discontinued after joining of one Full time Sweeper in that Branch.

(iv) From the copies of the Exhibits regarding his being authorized by the Bank for certain miscellaneous work outside the Branch can not indicate any evidence of being working in that Branch on permanent basis on a permanent nature of job as claimed by the workman.

(v) It is very clear from the available facts of the case that the concerned workman in this case has not been appointed on regular basis following any procedure or system for appointment of any employee of the Bank in that Category and nature of work.

(vi) The system and process of the appointment of the Bank has been narrated in detail by the Management in its written submission and need not be repeated here for the sake of brevity. It is also a fact as per record that the concerned workman has not been engaged or hired by the Bank by following any of the prescribed procedure and rule, any of such procedure and system of Recruitment of such category of employee by the Bank as narrated by the Bank Management. This fact has also been admitted by the concerned workman during his witness before this Tribunal during the proceeding.

(vii) The Bank Management has also cited some judgments of Hon'ble Supreme Court regarding the Fait Accompli of engaged/hiring any workman without following the system procedure for such recruitment even if such workman has been engaged for longer period.

11. Based on the above observations and the facts emerged it is concluded that concerned workman Shri Ram Chandra Paswan in this Industrial Dispute Case as referred by the Government of India for adjudication before this Tribunal does not qualify for any relief and as such no relief is awarded.

Dr. S. K. THAKUR, Presiding Officer

नई दिल्ली, 10 अगस्त, 2021

का.आ. 570.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के प्रबंधतंत्र, संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं. 2, धनबाद के पंचाट (संदर्भ सं. 131/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 10.08.2021 को प्राप्त हुआ था।

[सं. एल-12011/18/2013-आईआर (बी-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 10th August, 2021

S.O. 570.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 131/2013) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 10.08.2021.

[No. L-12011/18/2013-IR(B-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), AT DHANBAD

PRESENT :

Dr. S.K.Thakur, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d) of the I.D. Act., 1947

REFERENCE NO. 131 OF 2013

PARTIES:

The General Secretary,
Punjab National Bank Employees' Union,
C/o Punjab National Bank, Boring Road, Patna
(Bihar),

Vs.

The Zonal Manager,
Punjab National Bank,,
Circle Office,
At: Agoriya Bazar, Muzaffarpur (Bihar) .

Order No. L-12011/18/2013 IR (B-II) dt.03.05.2013

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Management Representatives

State : Bihar Industry : Banking

Dated, Dhanbad, the 2nd February, 2021

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following dispute to this Tribunal for adjudication vide their **Order No. L-12011/18/2013 IR (B-II) dt.03.05.2013.**

SCHEDULE

"Whether the action of the management of Punjab National Bank, Sonepur was erroneous in disallowing the officiating allowance as well as conveyance allowance to Sri Ram Bachan Singh, Special Assistant for the period from March, 2008 to April,2010 without any proper disposal of his raised grievance and written representation?" If so, whether the officiating as well as conveyance allowances in terms of money be given to the workman now?"

On receipt of the **Order No. L-12011/18/2013 IR (B-II) dt.03.05.2013** of the reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, it was registered as Reference case No. 131 of 2013 on 19.06.2013 and accordingly an order to that effect was passed to issue notices through the Registered Post to the parties concerned, directing them to appear before the Tribunal on the date fixed and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Post were sent to the parties concerned.

2. The final hearing of the case was fixed on 18.1.2021 for taking up the issue of filing Written Statement–cum Rejoinder by the Management side. Heard pleading of the respective side. None from Sponsoring Union or the petitioner is reported to be present on date. The O.P./Management is represented by Mr. P.R. Srivastava and Mr. Jai Krishna, Manager (H.R) and Senior Manager of the Bank respectively. Status of the case is fixed over filing Written Statement of Claim/rejoinder on the part of the O.P./Management ever since the date 28.10.2014 over which O.P./Management has preferred to buy more time on flimsy grounds on one account or other in submission of claim. Though copy of the Written Statement of Claim was served to Representative of the O.P./Bank on 05.09.2014 to file counter Written Statement/Rejoinder with documents, if any, record reflects the Sponsoring Union filed voluminous documents on 08.04.2015 in support of proof as per list to be used at the time of hearing with serving the same to the O.P./Management under signature.

3. The proceeding failed to move further as the O.P./Management was not at all diligent to proceed with case rather in habit of taking adjournment after adjournment just because of the party concerned the Sponsoring Union/petitioner did not care for appearance after having filed the Written Statement of claim to pursue further. The case registered on 19.06.2013 came into existence as Reference No. 131/2013 with issuance of notice for appearance on 21.08.2013,and subsequent appearances on 13.12.2013, 08.04.2014, 28.10.2014, 08.04.2015, 21.01.2019, 27.06.2019, 30.10.2019,18.01.2021 to 21.01.2021 for filing much awaited Written Statement of Claim with relevant documents, list of reliance and witnesses with exchanged copy of such statement to each other of the opposite parties involved in this dispute under rule 10(B) of the Industrial Disputes (Central) Rules, 1957 but they did not do anything in terms of the notices.

4. Notices were issued upon both the parties under Reference at the addresses referred in the Order of the Reference on 10.07.2013, 22.10.2013, 05.02.2014, 05.09.2014, 24.03.2015, and freshly on 04.01.2019, 03.06.2019,01.10.2019 and finally on 31.12.2020 .The Notices are deemed to have been served as none turned undelivered. So far hearings and adjournments granted suo motto during the hearings on dates 21.08.2013, 22.10.2013, 05.02.2014, 08.04.2014, 22.07.2014, 05.09.2014, 28.10.2014, 24.02.2015, 29.06.2015, 21.01.2019 27.06.2019, 30.10.2019 and on 18.01.2021.The Management Representative intermittently made appearances but were unable to file Written Statement of Claim. Matter was adjourned for hearing after submission of petition with documents in support of proofs .In other words the Union /Petitioner has already exhausted all legal remedial avenues. None appearance of the Sponsoring Union/petitioner for a prolonged period in spite of issuance Regd. Notices and adjournments has a negative impact over the proceeding. However for one reason or

the other, the matter kept getting adjourned on subjected and the O.P./Management has not been able to file Counter claim /Rejoinder on their part.

5. The Instant case matter concerns a dispute relating to disallowing of officiating allowance as well as conveyance allowance to the workman Sri Ram Bachan Singh, Special Assistant for the period from March, 2008 to April, 2010 by the O.P./Management of Punjab National Bank in complete disregard of proper disposal and written representation, seeking relief in terms of money he should have entitled to.

6. It appears from record that issue of filing Written Statement of claim rejoinder by the O.P./Management in the ibid natter has been kept pending since long back with no action from O.P./Management. During the hearing on 18.01.2021at Camp Court the Management side is represented through Management Representative Mr. P.R. Srivastava, Manager (HR) and Jai Krishna, Senior Manger and filed a written petition and contended that the workman in dispute is no more alive and annexed with the Death Certificate issued by the Municipal Corporation, Patna dated 20.02.2019 which was taken on record. Further to add here the workman, in question, had already superannuated from service w.e.f. 31.05.2016 and widow of the Late workman is already getting Family Pension and today itself none is available on his behalf even as substitute or any from Sponsoring Union during the pendency of the proceedings. This all are enough indication that the dispute under trial is no more in existence in the absence of the concerned workman due to his death and not filing any application for substitution of the petitioner nor representation by any legal heir during the hearing held after death of the petitioner. There was also no whisper from the Sponsoring Union about the petitioner status nor was filed any petition in this regard .Today (18.01.2021) the last and final consecutive day that neither any Representative nor any one has appeared and it clearly points uninterestedness on behalf of the Petitioner. The Industrial Dispute between them has therefore ceased and they have abandoned this case and the aforesaid constitutes as non-existent in the instant case which is liable to be disposed of forthwith.

7. In view of the above foregoing factual position, the Tribunal is constrained to hold that adjudication pending since 2013, more so, when the petitioner is no more does not require dragging the issue further for hearing as the Industrial Dispute. The relation between the employer and employee has ceased with expiry of the workman and in the absence of any substitute. The Industrial Dispute between the parties to this case has turned meritless with passing away of the workman (petitioner). The instant proceedings stands disposed of by virtue of the death of the workman and non-availability of substitution and the Industrial Dispute is dismissed as the parties being treated as having no existence and with the Award of no relief.

Dr. S.K.THAKUR, Presiding Officer

नई दिल्ली, 11 अगस्त, 2021

का.आ. 571.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, मुंबई के पंचाट (संदर्भ संख्या 28/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.08.2021 प्राप्त हुआ था।

[सं. एल-12011/107/2012-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 11th August, 2021

S.O. 571.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 28/2012) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Mumbai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 11.08.2021.

[No. L-12011/107/2012-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 MUMBAI

Present : JUSTICE RAVINDRTA NATH KAKKAR, Presiding Officer

REFERENCE NO.CGIT-1/28 OF 2012

Parties: Employers in relation to the management of State Bank of India

AND

Their workmen

Appearances:

For the first party Management : Mr. M. G. Nadkarni, Adv.

For the second party / Union : Mr. Umesh Nabar, Adv.

State : Maharashtra

Mumbai, dated the 05th day of April 2021

AWARD

1. The present reference has been made by the Central Government by its order dated 11.06.2012 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947. The terms of reference as per the schedule to the said order are as under:

"Whether the demand of the Union Stat Bank Karmachari Sena, for revision of pay of employees of erstwhile State Bank of India Commercial and International Ltd. From April, 2009 and fixing their pay thereafter in the pay scales of SBI from the date of merger i.e. 29/07/2011, is legal and justified? To what relief the Union is entitled?"

2. A perusal of the order sheet reveals that the statement of claim was filed by the Union and written statement filed by the management. Issues were framed on 28.04.2017. Thereafter on several dates the case was adjourned for cross examination of WW-1. On 19.01.2021, both the parties jointly informed that Settlement is arrived but certain formalities has to be completed and the matter was adjourned to 05.4.2021.

3. On 05.4.2021, when the case was taken up for hearing, Terms of Settlement was filed on behalf of both the parties and prayed for passing a Consent Award in terms of the Settlement and dispose of the Reference finally.

4. In view of the Terms of settlement filed on behalf of both the parties, no relief can be granted to the second party workmen and the reference is decided in terms of the settlement which shall form a part of this Award.

5. Award is passed accordingly.

JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer

नई दिल्ली, 11 अगस्त, 2021

का.आ. 572.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कानपुर के पंचाट (संदर्भ संख्या 51/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 11.08.2021 प्राप्त हुआ था।

[सं. एल-12012/01/2018-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 11th August, 2021

S.O. 572.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 51/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 11.08.2021.

[No. L-12012/01/2018-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE SHRI SOMA SHEKHAR JENA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, KANPUR

Industrial Dispute No. 51 of 2018

Shri Kambodar Singh S/O Late Prem Prasad,
38/397, A/1, Nagda budi, Dayal Bagh,
AGRA (U.P)-282005

Versus

1. The Regional Manager,
   State Bank of India, Anchlik Karyalaya,
   Sanjay Place,
   AGRA (U.P)-282002

2. The Branch Manager,
   State Bank of India, ADA, Jaipur House,
   AGRA (U.P)-282005

AWARD

The Central Government Ministry of Labour & Employment in letter no L-12012/01/2018-IR(B-1) dated 28.05.2018 has referred the dispute stated in the schedule mentioned below for adjudication .

SCHEDULE

"Whether the claim of workman, Shri Kambodar Singh S/o Late Prem Prasad ex-clerk against the action of the management of State Bank of India, Agra in discharging him from the services of the bank with effect from 09.09.2016 with superannuation benefits without disqualification for future employment is just, fair & legal? If yes, what relief the workman concerned is entitled and to what extent?"

After receipt of reference claimant petitioner Shri Kambodar Singh and authorized representative Shri R.N Awasthi and Shri Neeraj Sharma A.R of the Employer Bank appeared before this Tribunal.

Workman in his claim statement claimed that he joined the bank employer on 03.02.1995 as a messenger. In 2008 against the vacant post of permanent clerk he was promoted where he worked flawlessly. During the last days of his service the claimant worked as clerk-cum-cashier as per the direction of the bank manager of the Bank. On 16.05.2021 due to hectic work of cashier claimant failed to check the amount of the cash box. Cash –in-charge asked the claimant to halt the work and to verify the amount of the cash. Though as per the revised circular no. S & P /02/2008-2009 para 7 verification clause A the cash of counter can be verified at the end of the day which is clearly violation of the bank rule and regulation. After the verification the allegation of shortage of cash of Rs 65,000/- was made against the claimant. This incident took place on 15.05.2015 and next day claimant registered his attendance but attendance of 17.05.2015 to 19.05.2015 was not marked. On 20.05.2015 claimant was told by service manager that missing amount of Rs 65,000 was submitted in the cash box by the responsible officials of the bank and he was given permission to work. But on 25.05.2015 the manager suspended him illegally. He reported in police station on 04.06.2015 but no action was taken against the bank officials. Domestic enquiry was conducted but it was not fair and legal. As a result of Domestic enquiry the claimant was terminated with superannuation benefits without disqualification for future employment. Workman in his claim prayed before this Tribunal to quash the termination of workman as illegal and not fair and just and he should be reinstated to his position with all benefits.

During pendency of proceeding workman Shri Kambodar Singh appeared before the Tribunal and submitted a memo in writing declining his interest in pursuing the matter. The workman has virtually abandoned his claim. After hearing the workman and the A.R of the Employer (State Bank of India, Agra) it is crystal clear that the employer will release benefits accruing to the claimant petitioner with superannuation benefits. In such scenario there appears no triable issue and the reference stands disposed of with the direction the the Employer State Bank of India shall release post superannuation benefits in favour of Shri Kambodar Singh, ex clerk without delay in accordance with the rules.

In the circumstances the reference stands disposed of without any costs.

SOMA SHEKHAR JENA, Presiding Officer

नई दिल्ली, 12 अगस्त, 2021

का.आ. 573.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 87/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2021 को प्राप्त हुआ था।

[सं. एल-22012/114/1997-आईआर (सीएम-II)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 12th August, 2021

S.O. 573.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 87/98) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s S.E.C.L and their workmen, received by the Central Government on 06.08.2021.

[No. L-22012/114/1997-IR(CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, JABALPUR

NO. CGIT/LC/R/87/98

Present: P. K. Srivastava, H.J.S..(Retd)

The Secretary
Rashtriya Colliery worker Federation
(INTUC), Camp-B, 19, Ravinagar Colony
Post Jhimar Colliery,
District Shahdol. ... Workman

Versus

The Chief General Manager
SECL Ltd., Hasdeo Area,
South Jharkhand Colliery,
District Sarguja (M.P.) ... Management

AWARD

(Passed on this 20th day of July-2021)

As per letter dated 24/4/98 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/114/97-IR(C-II). The dispute under reference relates to:

> "***Whether the action of the management of the General Manager, Hasdeo Area of SECL in n ot regularising 161 (worker list enclosed in Reference) during the year 1989-1992 is legal and justified? If not, to what relief the workman are entitled to ?.***"

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The workman/union alleged in its statement of claim that it is a Registered Trade Union under the provisions of Trade Union Act and is affiliated to National Labor Organisation, a Central Trade Union. The Union represents the cause of workers. The list of 161 workers enclosed with the reference with regard to their regularization and declaration that they are workers of the Management being engaged in the prohibited category of work. The respondent company is a company registered in Companies Acts and its shares are vested with the Union Government which has total control of working, function and management of the company. After nationalization of the coal business in 1973 by the Coal Nationalization Act, the Company is covered under the meaning of "State" as mentioned in Article 12 of the Constitution. The business of the company is coal production for which it has taken various projects which includes operation and construction of new coal mines. Kurja Coal Mines is an underground Coal Mine and construction of which started in the year 1989,

became final in the year 1996-97. For the purposes of construction and excavation of coal mines, the Respondent/Management floated tenders for the work of drivage of 2 numbers incline shafts for Kurja Incline at Hasdeo Area sized (4.8 cm x 2.40 mts) and total length of 150 MT each. The said coal mine is an underground coal mine and the contract was for construction of the said coal mines underground and drivage of shafts. It was clear from the tender notice that the work was of over burden, removal and earth cutting as well drivage of shaft underground. An agreement was entered between the Management and the Contractor M/s Nalanda Enterprises on 10-11-1990 for the works as mentioned in the tender notice. The workers mentioned in the list to the reference total 161 were employed for execution of the said work by Management through the Contractor. The workers were in employment from March-1989 to October-1992 for construction of Kurja coal mine underground, as mentioned in the copy of certificate issued by Contractor Nalanda Enterprises, the workers in the list were engaged for over burden, removal of earth cutting, drivage of stone, drifting and misc. stone cutting in an underground colliery. Also, it was alleged that the Labor Enforcement Officer Chirmiri in his visiting report of the project on 19-6-1991 and other dates also observed that the workers were employed for removing, overburden, earth cutting and drifting at Kurja Project and they were not being paid wages as per Statutory Rules. He also noticed that they were engaged for a prohibited work under Contract Labor Regulation Act which goes to strengthen the case of allegation of the workman/union that the workers were engaged by the Contractor in a work of prohibited category and they were engaged in underground mine in regular nature of work. Under the safety rules, the Management prepared Form-B register of the workers, which were counter signed by the contractor Nalanda Enterprises. According to the workman/Union, as per definition Clause'H' of Mines Act, 1952 "the persons is said to be employed in underground, who works as the Manager or who works under appointment by the agent or manager of the mines or with the knowledge of the Manager whether for wages are not in operation of service relating to the development of the mines, including construction of plant therein and in operating servicing, maintaining or repairing any part of machinery used in or about the mines in any kind of work, what so ever which is preparatory or incidental to or connected with mining operations". Hence, the workers employed in the case in hand shall be deemed to be mining workers and covered under provisions of National Coal Wage Agreement. It was also alleged that vide its notification issued by the Central Government under Section 10 of the Contract Labor (Regulation & Abolition)Act, there has been a prohibition for employment of contract worker for execution of following works:-

(a)-Raising or raising-cum-selling of coal;

(b)-Coal loading and unloading;

(c) -Overburden, removal and earth cutting;

(d)-Soft Coke manufacturing;

(e)-Drifting of stones, drift and Misc. stone cutting.

3. Hence, according to the workman/union, the workman in the list were engaged for activities which come under category of prohibited activity, for which contract workers cannot be engaged. Since the workers were not paid according to the National Coal Wage Agreement, in spite of the fact that they were shown to be engaged through contractors, which was not permissible in law, as the work for which they were engaged was of prohibited category and perennial in nature, the Union raised this issue with the Management and demanded their regularization and the declaration that they were workers of Management, the principal employer Company. The management refused to accept the demand of workman Union, hence a dispute was raised and after failure of conciliation the reference was sent to this Tribunal for Award. The workman/Union has prayed that the workers mentioned in the list attached to the reference, be held workman of Principal Employer of the Management Company and not of the Contractor and the action of Management in not regularizing them, be declared against law.

4. The case of the management, in its written statement of defence is mainly that, the reference order is bad in law and not maintainable on the ground that the enclosed list of names of claimants is incomplete, vague and it is not possible to identify all the workers. The workman/Union has not filed any detailed particulars of the workers mentioned in the list attached with the reference with their fathers name, age, sex, present and permanent address, date, nature and place of work as well as date of their dis-engagement. Also, it was pleaded that on application of Management dated 28-10-1998, the Tribunal directed the union to supply these particulars vide its order dated 28-10-1998. The Union did provide the details on 28-1-1999 which was incomplete with respect to 34 claimants. Photographs were not attested by competent Authority, hence claim of at least 34 claimants should not be taken into account. It was further pleaded that, the Union also declared on 28-1-1999 that claims of 19 claimants in the list attached with the reference were the same in another case arising out of a separate reference which is CGIT/LC/R/86/98, hence their claim cannot be maintainable in two cases, they have to opt either one of the cases. The second case CGIT/LC/R/86/98 relates to other separate mines of Hadsdeo area. The Union did not delete the names of such persons who were in both the references. It was further pleaded by Management that the claimants were engaged through the contractor M/s Nalanda Enterprises who have not been impleaded in the dispute, on this ground also the reference is not maintainable. The workers are

the employees of the contractors, who is a necessary party. The Management has flatly denied that the work was for prohibited category and /or was of perennial nature. According to the Management, the work was drivage of two numbers of inclined shafts for Kurja Inclines which was to commence from 19-5-1990 till 18-10-1990 i.e. within a period of six months. Tenders were floated for the work and lowest was awarded to M/s Nalanda Enterprises. The work was of purely civil nature of construction of coal mine through drivage of Inclined Shaft. The Contractor was issued license to engage 90 workers for the period 25-3-1991 to 24-9-1991 and 30-12-1991 to 29-6-1992. He was also issued a license for engaging 50 contract labor from 21-7-1992 to 20-1-1993 and the work was executed by the contractor. The work completion certificate was also issued at his end. It is also the case of Management that Union had raised the same dispute before the Conciliation Officer, which ended in failure on 24-8-1994. Report was sent to the Ministry and Ministry did not think fit to send any reference for adjudication. This refusal was communicated to the workman/Union vide letter dated 10-5-1995. The workman preferred a writ before Hon'ble High Court of Madhya Pradesh at Jabalpur and it was under the directions of Hon'ble High Court, the present Reference has been sent to this Tribunal for adjudication. Thus according to the Management, the work was of purely civil nature and it was neither prohibited nor of perennial nature, hence the workman were not the workers of the Management, rather they were the workers of Contractor, hence according to the Management, they cannot claim themselves to be workman of the Management and also they cannot claim themselves to be regularized with the Management. Accordingly, it has been prayed that the reference be answered against the workman.

5. Both the parties have filed rejoinder, wherein they have mainly reiterated their claim/defense.

6. The workman side has filed documents Exhibit W-1 to Exhibit W-9 which are mainly papers regarding tender project, Government Notification, copies of proceedings recorded during conciliation. These documents shall be referred to as and when required. It is to be mentioned here that almost some documents have been filed by Management also which are in original and same documents are certified copies which are as follows:-

A. Exhibit M-1:-Tender Notice for drivage of two no. Incline Shaft for Kurja Incline of Hasdeo Area issued on 13-10-1998.

B. Exhibit M-2 :-Letter dated 28-11-1989 to the Management by the bidder company.

C. Exhibit M-3 :-Tender details dated 14-10-1989.

D. Exhibit M-4 :-Work agreement between the contractor and Management showing date of commencement as 19-5-1990 and date of completion as per agreement showing 18-11-1990.

E. Exhibit M- 5 :-Reply of Management to the Contractor M/s. Nalanda Enterprises on 19-4-1990 with respect to his tender communication approval of his bid.

F. Exhibit M-6 :- Extension letter dated 25-2-1992 issued by Management for extension of work to the contractor.

G. Exhibit M- 6(A) :- Another extension letter date 14-11-1992 granting further extension.

H. Exhibit M-6(B) :-Extension letter dated 14-11-1992, extending the period to the second contractor M/s Mazhar Ali.

I. Exhibit M-8 :- Labour payment certificatge issued by contractor M/s. Nalanda Enterprises for the period 1-10-1992 to 31-10-1992 for 50 workers.

J. Exhibit M-9 :-Wage bill for the said period.

K. Exhibit M- 10 :-Tender document for the tender dated 28-11-1989 issued to contractor M/s. Mazhar Ali.

L. Exhibit M-11 :- It is the same tender notice which is M-4

M. Exhibit M- 12 :-Tender for works memorandum.

N. Exhibit M-13 :-Letter of Management dated 28-5-1990 communicating the approval of his bid to the second contractor M/s Mazhar Ali.

O. Exhibit M- 14 :-Letter dated 14-11-1992 issued by Management to second contractor M/s Mazhar Ali, granting extension till 31-10-1992.

P. Exhibit M- 15(I-II-III) :- License issued by Ministry of Labour under Contract Labour and Regulation Act for drivage of Incline Shaft at Kurja underground project empowering him to employ workers on different dates.

7. The Management has also filed certified copies of documents which are almost the same. They have been marked Exhibit M-16 to M-40 by my learned Predecessor. They are mainly tender documents, approval letters to the contractors M/s Nalanda Enterprises and M/s Mazharn Ali. Their work license issued under Contract Labour Regulation and Abolition Act and notifications of which the Tribunal may take necessary notice.

8. The workman Union has examined two witnesses one Shivji S/o Jaganath Singh and other Gyani Das, S/o Chetan Das on oath and have been cross-examined by Management.

9. The Management has examined Brijesh Shukla, Engineer of Management as witness, who has been cross-examined by workmen/union.

10. I have heard arguments of learned Counsel for workmen/Union Shri R.C.Shrivastava and Shri A.K. Shashi, learned counsel for the Management. Parties have filed memorandum of arguments which are taken on record. I have gone through the records, written submission made by parties and also the case law relied to by the parties.

11. Following issues arise for determination in the case in hand, as it appears from the perusal of the record, in the light of the rival arguments.

"1: Whether the workmen were engaged in work of prohibited category.

2: Whether the alleged contracts where sham and bogus, rather a camouflage to deprive the workmen of their benefits.

3: Whether the disengagement of workmen is justified in law and fact.

4: Whether the workmen are entitled to any benefits."

12-Issue No. 1.

According to the respective claims of the parties in this case, it is alleged from the side of the Workmen that the said contract is of prohibited category on two grounds **Firstly,** because it was work of perennial/regular nature and **Secondly,** it was prohibited by notification of Government of India dated 21-1-88.

Section 1 Sub-Section (5) of the'CLRA Act'is relevant here which is being reproduced as follows:-

"(a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed. (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

Explanation.--For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature—

(i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or

(ii) if it is of a seasonal character and is performed for more than six months in a year."

13. Learned Counsel for the Workmen/Union has further referred to Clause **11.5.1 of the agreement of NCWA 4/5** which reads as follows:-

"Industries shall not apply labors through contractor or engage contractor's labor on jobs of permanent and perennial nature."

14. Learned Counsel further refers to Notification of Government of India dated 21-6-1988 on record **which prohibits contract labor** in following jobs :-

SCHEDULE

1. Raising or raising-cum-selling of coal;
2. Coal loading and unloading:
3. Over burden removal and earth cutting:
4. Soft coke manufacturing
5. Driving of stone drifts and miscellaneous stone cutting underground:

Provided that his notification shall not apply to the following categories:-

(a) Quarries in the North-East Coal Field which can only be worked for a few months every year due to heavy rainfall in the area:

(b) Quarries located by the side of the river in Pency valley and similar other patch deposits which can only be worked when the level of river has gone down and during non-rainy seasons;

(c) Loading coal when there is mechanical failure, failure of power or irregular supply of wagon by the railway; and

(d) Cutting stone drifts/faults which cannot be detected in advance and are of short duration, say up to six months.

15. It is in the argument of learned Counsel of Workmen that since there was in prohibition of NCWA and CLRA Act, as mentioned above, hence the work for which the so called contractor is alleged to have been engaged of prohibited nature which could not be done through contractor. On the other hand, learned counsel for Management has submitted that **firstly**, the work is not of perennial nature as mentioned in Section -1 Sub-Section 5 of the CLRA Act 1972 and **secondly,** the evidence on record as well documents regarding the issuing of tender and work agreement as well as work order no where show that the said got executed through the contractor was of prohibitory category as mentioned in the notification dated 21-6-1988.

16. The workmen witness Shivji has stated on oath that he had started work in Kurja Mines in the year 1989. First he was given work of raising the mud. The mud and stones were removed for a distance of 10 to 15 meters before construction of Incline. Thereafter two drivages were opened after cutting the stones. His job was of line mazdoor. He used to do the job of breaking stones, loading them in tubs and making holes for blasting. The other workmen were also engaged in the same job. His names was in the Form-B register, prepared by the Management. He was given B.T.Training along with other workmen. The work was done under the supervision of Overman and Mining Sardar. Instruments were issued by the Management for this. Attendance was taken on Form-C, No representative of Contractor used to be their in the underground mine. In his cross-examination, he has stated that firstly mud was removed, thereafter stones were broken and removed for the purpose of extraction of coal. He admits that he was not engaged in the work of blasting. He used to break the stones and load it in tubs. He used to load, extracted coal also. The work was done in three shifts. Attendance was taken by the Management Organisation. The other witness Gyanidas has stated that he used to pay the wages of the workmen engaged inside the mines . IN his cross-examination, he states that he still works in Kurja Mines. He further states in his cross-examination that the Contractor's labours were paid by him. He claims himself to be appointed as clerk Grade-I at Kurja Area in the Management Company.

17. The Management witness Brijesh Shukla claimed himself to be Engineer with the Mines, employed by the Management. As stated in his affidavit that the work was for execution of drivage of 2 numbers Incline Shaft for Kurja Incline of Hasdeo Area for which a tender notice on 13/14-10-1989 inviting tenders from registered Contractors was issued. The period of completion of the work was six months. The work was to be done from 19-5-1990 to 18-11-1990 which was the date of its completion. A detailed notice inviting tenders, general terms and conditions, safety code, general abstract of cost, parameters for man power etc, special conditions of drifting of incline shaft, Schedule-C specification were issued for this purpose. The contract was awarded to Contractor M/s. Nalanda Enterprises on 19-4-1990. After acceptance of offer of contract, agreement was executed between the Management and the Contractor M/s Nalanda Enterprises on 10-11-1990, accepting the terms and conditions. Then Contractor obtained license from Licensing Authority for the said work. The work was of purely civil nature , which was extended up to 1992 vide letter dated 25-2-1992 as the contractor M/s Nalanda Enterprises could not complete the work, therefore, it was awarded to another contractor M/s Mazhar Ali vide letter dated 14-11-1992. The Second Contractor obtained license for the work from Licensing Authority in Contract Labour Regulation and Abolition Act. According to the witness, the work was on non-prohibited category and temporary. This witness admits that attendance of the workers engaged for the work was taken on Form-C, D & E but were maintained by the Contractor with respect to their workers. The Management witness has also stated that the particulars of the claimants are also disputed.

18. In his cross-examination, the witness has denied that any Form-B is maintained with respect to contract workers. His this statement is against record because photocopy(but not proved) Form-B has been filed by workmen Union with respect to around 40 workers which are document No.297 to 331. They have been signed by the Contractor M/s Nalanda Enterprises. This leads to a conclusion that Form-B of such workers was maintained but by the Contractor, which the Management witness has also admitted in his statement. The Management witness has further denied that the work was of prohibited nature or of perennial nature.

19. The second Contractor M/s Mazhar Ali has also been examined on oath in this case. He has stated about getting contract and has further stated that the affidavit of workers engaged by him was taken by the contractor. He has proved the tender bid filed by him with respect to tender and work agreement Exhibit M-10 to Exhibit M-15. In his cross-examination by workmen/Union, he has admitted that the work was supervised by

the Management representative and was done under their instructions. He also admits that instructions for entering into the mines underground and work order was issued to the workers by the Management.

20. **From the statement of management witness, it is established that the** work which was to be completed within six months as per the official tender, actually continued for more than two years to complete. Therefore, in the light of this finding the case of Management that the said order was of casual /intermittent nature to be completed within six months, hence it is not a work of permanent or perennial nature and is liable to be rejected**. On the basis of the evidence on record, the fact that the work got executed by Management through alleged contractor was of a permanent/perennial nature for which the contract labor is prohibited as per Section 1 of sub-section(5) of CLRA Act 1970 is held proved**.

21. As regards, **the second ground taken by workmen that the work was of prohibited category** in the light of notification of 1988**,** which has been referred to earlier in this Judgment. According to the learned counsel for the workmen the work allotted was driving of stone drifts and miscellaneous stone cutting under ground hence it was a prohibited job for which Notification under Section 10(1) of CLRA Act was issued in 1988. On the other hand , it has been submitted by learned counsel for management that in fact the work was allotted for drivage of stone refits and miscellaneous stone cutting underground was taken from the applicants. Learned counsel has referred to the Proviso-D of the said notification of 1988 wherein cutting stone rifts/faults which cannot be detected in advance and are of short duration say upto six months is exempted from prohibition and has submitted that unforeseen stone layer coming in the way while executing the work of drivage of inclined shaft are to be of short duration hence cannot be covered under the prohibition as prohibited. This argument has been rebutted by learned counsel for workmen/union with an argument that evidence on record in form of statement of witnesses and documents and as proved that in the garb of drive of incline shaft in the so called agreement work of driving of stone drifts and misc. stone underground cutting was taken from the workmen. Learned counsel has referred to the statement of the workmen witness in this respect firstly .The contractor stated that their main work was breaking stones, loading stones, making holes for blasting. They also worked for removing sand and reloading stone for construction of incline . They worked under the supervision of the Management of the Company. In his cross-examination, the workmen has stated that they were allotted different duties by the Mining Sardars and Overman. They also stated that the instruments were given by the management and not by the Contractor. They were given training for work.

22. From the statement as well as Project Report it is established that possibility of cutting stone drift/blasts was not ruled out in the project report and by the management. Hence, the arguments of learned counsel for management that it could not be detected in advance, fails in the light of above discussion**.** It is held proved with the work continued for two years i.e. more than six months, hence on the basis of these proved facts Proviso-D of the notification could not apply to the case in hand on the basis of the evidence as discussed above, it is held proved that the workmen were engaged in driving of stone drifts and misc. stone cutting underground while taking the work of drivage of Incline which was known to the management in advance and they were not of a short duration of six months rather they continued up to two years.

23. Accordingly, the claim of the workmen union that the work done was prohibited vide notification of July-21-1998 and was classified in a prohibited category which could not be taken by contract labor as provided under Section 10(1) of CLRA Act, is held proved

24. On the basis of the finding recorded above holding that **firstly,** the work was of perennial nature for which employment of contractor was prohibited under Section 11.5.1 of NCWA- IV/V and **secondly**, the work was of prohibited nature as provided under Clause 5 of Schedule of prohibited works in the prohibition notification June-21-88 **,Issue No.1is answered in favor of workmen.**

25. ISSUE NO. 2:-

Before entering into examination of evidence on this issue produced from both the sides, it is proper to refer to the case laws referred to by both the side learned counsel in this respect is as under-

26. The learned Counsel for workmen/Union has referred to case law **Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and others, (1978)4 Supreme Court Cases 257**. The relevant portion is reproduced below: -

> *"Labor and Industrial Law — Industrial Disputes Act 1947 — Section 2(s) — Employer and employee relationship — Workmen employed by independent contractor to work in employer's factory — Whether "workmen" — Tests for determining.*
>
> *The petitioner is a factory owner manufacturing ropes. A number of workmen were engaged to make ropes but they were hired by contractors who had executed agreements with the petitioner to get such work done. When 29 of those workmen were denied employment, an industrial dispute was referred by the State Government and the award was attacked on the ground that the workmen were not workmen of the petitioner but only of the contractor. The High Court rejected the contention.*

Dismissing the appeal, the Supreme Court.Held: The facts found are that the work done by the workmen was an integral part of the industry concerned, that the raw material was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade. The workmen were broadly under the control of the management and defective articles were directed to be rectified by the management. This concatenation of circumstances is conclusive that the workmen were the workmen of the petitioner.

Para-2

The true test is where a worker or group of workers labor to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contrctu is of no consequence, when, on lifting the veil or looking at the conspectus of factors governing employment, the naked truth is discerned, and especially since it is one of the myriad devices resorted to by managements to avoid the responsibility when labor legislation casts welfare obligations on the real employer based on Arts. 38, 32, 42, 43 and 43A. If livelihood of the workmen substantially depends on labor rendered to produce goods and services for the benefit and satisfaction of enterprise, the absence of direct relationship or the presence of dubious intermediaries cannot snap the real life-bond. If, however, there is total dissociation, in fact, between the disowning management and aggrieved workmen, the employer is in substance and in real life-term, by another.

27. Learned Counsel for workmen has further referred to following case laws-*Gujarat Electricity Board, Thermal Power Station, Gujrat Vs. Hind Mazdoor Sabha, 1995-II-LLJ-790*

Industrial Disputes Act, 1947- Sec. 2(k), 2(s), 10(2) – Contract Labor (Regulation & Abolition) Act 1970- Sec.10 – Abolition of contract labor – industrial dispute – jurisdiction of Labor Court under Industrial Dispute Act – Jurisdiction of Appropriate Government has exclusive jurisdiction to decide in regard to abolition of contract labor – section 10 of the Contract Labor Act would come into play only in cases of genuine contract and not when contract is sham or camouflage – contract Labor abolition act does not provide for status of the contract labor after abolition – Industrial Tribunal whether have jurisdiction to direct principal employer to absorb erstwhile workmen of the contractor and also determine the terms and conditions – Industrial adjudicator will determine the status of a workmen or abolition of contract labor, if industrial dispute was pending before him on date of abolition of contract labor system by appropriate government – workmen of erstwhile contractor can raise dispute on the basis that they are workmen of principal employer and dispute in such cases would be not for abolition of contract labor, but on the footing that workmen were always employees of principal employer - ''

28. ***Secretary, Haryana Electricity Board Vs. Suresh and others, AIR-1999-SC-1160.***

"(E) Contract Labor (Regulation and Abolition) Act (37 of 1970), S.10 – Contract Labor – Absorption in service- Electricity Board – Work of keeping plants and station clean and hygienic awarded to contractor- work not of seasonal nature – contract itself stipulating number of employees to be engaged by Contractor – Overall control of working of contract labor including administrative control remaining with the Board – Board neither registered as principal employer nor contractor was licensed contractor – Contract system was thus a mere camouflage which could be easily pierced and employer employee relationship between Board and employee easily visualized – Employees who have worked for more than 240 days cannot therefore be denied absorption."

29. **Learned counsel has referred following para (Paras 15, 17, 19),being reproduced as follows-**

'15- It would in this context, however, be convenient to note the observations of the High Court as below:-

"The learned counsel for the petitioner has tried to argue that the findings of fact arrived at by the Labor Court was not based upon proper appreciation of evidence. This plea cannot be accepted in as much as the Labor Court has referred to the whole of the evidence lead in the case before coming to such a conclusion. Otherwise, also in view of the law laid down by the Supreme Court in R.K. Panda's case (supra) the findings of fact arrived at by the Labor Court cannot be set aside in writ jurisdiction particularly when it is neither perverse nor contrary to the record but based only on appreciation of evidence. Keeping in view the nature of the work being carried on by the petitioner, the nature of duties which were performed by the respondents-workmen, the continuity of the work for which the labor was employed and the fact that the wages were paid by the petitioner-employer who supervised and controlled not only the attendance but also discipline of the workmen in the discharge of their duties and keeping in view the conditions of contract of the employer with Kashmira Singh, Contractor, there

is no other conclusion which can be arrived at except the one that there existing a relationship of employer and workmen between the contesting parties and the Labor Court had rightly passed the award which is impugned in this petition."

17-As noticed above Draconian concept of law is no longer available for the purpose of interpreting a social and beneficial piece of legislation specially on the wake of the new millennium. The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises – is it permissible in the new millennium to decry the cry of the labor force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution – the answer cannot possibly be in the affirmative – the law courts exist for the society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought rise up to the occasion to meet and redress the expectation of the people. The expression 'regulation' cannot possibly be read as contra public interest but in the interest of public.

19-It has to be kept in view that this is not a case in which it is found that there was any genuine contract labor system prevailing with the Board. If it was a genuine contract system, then obviously, it had to be abolished as per Section 10 of the Contract Labor Regulation and Abolition Act after following the procedure laid down therein. However, on the facts of the present case, it was found by the Labor Court and as confirmed by the High Court that the so called contractor Kashmir Singh was a mere name lender and had procured labor for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. The Labor Court also noted that the Management witness Shri A.K. Chaudhary also could not tell whether Shri Kahsmir Singh was a licensed contractor or not. That workmen had made a statement that Shri Kashmir Singh was not a licensed contractor. Under these circumstances, it has to be held that factually there was no genuine contract system prevailing at the relevant time wherein the Board could have acted as only the principal employer and Kashmir Singh as a licensed contractor employing labor on his own account. It is also pertinent to note that nothing was brought on record to indicate that even the Board at the relevant time, was registered as principal employer under the Contract Labor Regulation and Abolition Act. Once the Board was not a principal employer and the so called contractor Kashmir Singh was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that the so called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board, on the one hand, and the employees, on the other, could be clearly visualised.'

30. ***Bharat Bank Limited Vs. Employees of Bharat Bank Limited, AIR 1950 SC 188***.

The Hon'ble Supreme Court has held that the Tribunal has got wide power in given circumstances, it can create contract between parties in the interest of justice. No other Courts vested with such power.

31. On the other hand learned Counsel for the Management referred to a judgement of Supreme Court in **case The Director SAIL India vs. IspatKhadandan Mazdoor Union ,(Civil Appeal no- 8081-8082 of 2011) reported in AIR 2019 SC 3601. Para 33,35,39,41,44,46,48,49** have been specifically referred to by learned counsel as follows:-

Before we may advert to examine the question in the instantappeals any further, it will be apposite to take note of the legaleffect of the prohibition notification issued by the appropriate Government in exercise of power under Section 10(1) of CLRA Act and its exposition by the Constitution Bench of this Court in Steel Authority of India Ltd. and Others (supra) overruling the judgment in Air India Statutory Corporation and Others (supra).

The legal consequence of Section 10(1) of the CLRA Act,has been noticed in paragraph 68, 88, 105 an d 125 as follows:

24"68.We have extracted above Section 10 of the CLRAAct which empowers the appropriate Government toprohibit employment of contract labor in any process, operation or other work in any establishment, laysdown the procedure and specifies the relevant factors which shall be taken into consideration for issuing notification under subsection (1) of Section 10. It is a common ground that the consequence of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labor, is neitherspelt out in Section 10 nor indicated anywhere in the Act.

In our view, the following consequences follow onissuing a notification under Section 10(1) of the CLRA Act:

(1) contract labor working in the establishment concerned at the time of issue of notification will cease to function;

(2) the contract of principal employer with thecontractor in regard to the contract labor comes to an end;

(3) no contract labor can be employed by the principal employer in any process,operation or other work in the establishmentto which the notification relates at any time thereafter;

(4) the contract labor is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labor;

(5) the contractor can utilise the services of the contract labor in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it, will be available;

25 (6) if a contractor intends to retrench his contract labor, he can do so only in conformity with the provisions of the ID Act. The point now under consideration is: whether automatic absorption of contract labor working in anestablishment, is implied in Section 10 of the CLRA Act and follows as a consequence on issuance of the prohibition notification thereunder. We shall revert tot his aspect shortly. 88. If we may say so, the eloquence of the CLRA Act in not spelling out the consequence of abolition of contract labor system, discerned in the light of various reports of the Commissions and the Committees and the Statement of Objects and Reasons of the Act, appears to be that Parliament intended to create a bar on engaging contract labor in the establishment covered by the prohibition notification,by a principal employer so as to leave no option withhim except to employ the workers as regular employeesdirectly. Section 10 is intended to work as a permanentsolution to the problem rather than to provide a onetime measure by departmentalizing the existing contract labor who may, by a fortuitous circumstancebe in a given establisment for a very short time as onthe date of the prohibition notification. It could as well be that a contractor and his contract labor who were with an establishment for a number of years were changed just before the issuance of prohibition notification. In such a case there could be no justification to prefer the contract labor engaged on the relevant date over the contract labor employed for a longer period earlier. These may be some of the reasons as to why no specific provision is made for automatic absorption of contract labor in the CLRA Act. 105. The principle that a beneficial legislation needs tobe construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for thatprovided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labor and 26 authorizes in Section 10(1) prohibition of contract labor system by the appropriate Government on consideration of factors enumerated in sub¬section (2) of Section 10 of the Act among other relevant factors.But, the presence of some or all those factors, in our view, provides no ground for absorption of contract labor on issuing notification under sub-section (1) of Section 10. Admittedly, when the concept of automaticabsorption of contract labor as a consequenceof issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of theCLRA Act is explicitly provided in Sections 23 and 25of the CLRA Act, it is not for the High Courts or thisCourt to read in some nspecified remedy in Section10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labor in the establishment of principal employer or a lesser or a harsher punishment. Such aninterpretation of the provisions of the statute will be farbeyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult toaccept that Parliament intended absorption of contract labor on issue of abolition notification under Section 10(1) of the CLRA Act.

125. The upshot of the above discussion is outlined thus: (1)(a) Before 28¬1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port, mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which 27 the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition ofthat expression, the answer to the question referred toabove, has to be found in clause (a) of Section 2 of theIndustrial Disputes Act; if (i) the

Central Government company/ undertaking concerned or any undertakingconcerned is included therein eo nomine, or (ii) any industry is carried on:

(a) by or under the authority of the Central Government, or

(b) by a railway company; or

(c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRAAct prohibiting employment of contract labor in anyprocess, operation or other work in any establishmenthas to be issued by the appropriate Government: (1) after consulting with the Central AdvisoryBoard or the State Advisory Board, as the case may be, and

(2) having regard to(i) conditions of work and benefits provided for the contract labor inthe establishment in question, and(ii) other relevant factors including those mentioned in subsection (2) of Section 10;

(b) Inasmuch as the impugned notification issued bythe Central Government on 9121976 does not satisfy he aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on thebasis of this judgment nnoorder passed or no actiontaken giving effect to the said notification on or before28the date of this judgment, shall be called in question inany tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any otherprovision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under subsection (1) of Section 10, prohibiting employment of contract labor, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labor working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377] prospectively and declare thatany direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labor following the judgment in Air India case [(1997) 9 SCC 377] shall hold good and that the same shall not be set aside, altered or modified on thebasis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labor or otherwise, in an industrial dispute brought before it by any contract labor in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contractlabor for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as todeprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the socalled contract labor will have tobe treated as employees of the principal employer who shall be directed to regularise the services of the contract labor in the establishment concerned subject to the conditions as may be specified by it for thatpurpose in the light of para 6 hereunder.

29 (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labor in any process, operation or other work of any establishment and where in such process, operation or other work ofthe establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labor, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

33. The exposition of the judgment of the Constitution Bench ofthis Court made it clear that neither Section 10 nor any otherprovision in the CLRA Act provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under Section 10(1) of CLRAAct.Consequently, the principal employer is not required or is underlegal obligation by operation of law to absorb the contract laborworking in the establishment. 34. This court in Steel Authority of

India Ltd. and Others (supra) further held that on a issuance of notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labor in any process, operation or other work, if any

30. industrial dispute is raised by any contract labor in regard to condition of service, it is for the industrial adjudicator to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labor for work of the establishment under a genuine contract, or as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of statutory benefits. Ifthe contract is found to be sham, nominal or camouflage, then the so called labor will have to be treated as direct employee of the principal employer and the industrial adjudicators should direct the principal employer to regularise their services in the establishment subject to such conditions as it may specify for that purpose in the facts and circumstances of the case.

35. On the other hand, if the contract is found to be genuine and a prohibition notification has been issued under Section 10(1) of the CLRA Act, in respect of the establishment, theprincipal employer intending to employ regular workmen for theprocess, operation or other work of the establishment in regard towhich the prohibition notification has been issued, it shall givepreference to the erstwhile contract labor if otherwise foundsuitable, if necessary by giving relaxation of age as it appears tobe in fulfilment of the mandate of Section 25(H) of the Industrial Disputes Act, 1947.

32. It may be noted that the learned counsel for the respondent has placed reliance on the judgments of this Court in:-

Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another ; Hussainbhai, Calicut Vs. Alath Factory Thezhilali Union, Kozhikode and Others ; Indian Petrochemicals Corporation Ltd. and Another Vs. Shramik Sena and Others and these cases have been considered by the Constitution Bench of this Court in SteelAuthority of India Ltd. and Others(supra) of which a detailed reference has been made by us.

37. Tests which are to be applied to find out whether the person is an employee or an independent contractor in finding out whether the contract labor agreement is sham, nominal or a t1974(3) SCC 498 5 1978(4) SCC 257 6 1999(6) SCC 439 32 mere camouflage has been examined by this Court in **International Airport Authority of India Vs. International Air Cargo Workers' Union and Another** by the two judge Bench of this Court. The relevant paras are as under:

"38. The tests that are applied to find out whether a person is an employeeor an independent contractormay not automatically apply in finding out whether thecontract labor agreement is a sham, nominal and is amere camouflage .

For example, if the contract is forsupply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer butthat would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment iswith the contractor, and the` ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directsthe work to be done by a contract labor, when such labor is assigned/allotted /sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decideswhere the employee will work and how long he will work and subjectto what conditions. Only when thecontractor assigns/sends the worker to wok under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

40.These are the broad tests which have been laid down by this Court in examining the nature and control of the employer and 2009 (13) SCC 374 33whether the agreement pursuant to which contract labor has been engaged through contractor can be said to be sham, nominal and camouflage.

33. To test it further, apart from the statutory compliance which every principal establishment is under an obligation to comply with, its noncompliance or breach may at best entail in penal consequences which is always for the safety and security of the employee/workmen which has been hired for discharge of the nature of job in a particular establishment. The exposition of law has been further considered in International Airport Authority of India case(supra) where the contract was to supply of labor and necessary labor was supplied by the contractor who worked under the directions, supervision and control of the principal employer, that in itself will not in any manner construe the contract entered between the contractor and contract labor to be sham and bogus per se. Thus, in our considered view, if the scheme of the CLRA Act and other legislative enactments which the principal establishment has to comply with under the mandate of law and taking note of the oral and

documentary evidence which came onrecord, the finding which has been recorded by the CGIT underits award dated 16th September, 2009 in absence of the finding offact recorded being perverse or being of no evidence and even ifthere are two views which could possibly be arrived at, the view expressed by the Tribunal ordinarily was not open to be interfered with by the High Court under its limited scope of judicial review under Article 226/227 of the Constitution of India and this exposition has been settled by this Court in its various judicial precedents.

34. It is true that judgment in Dena Nath and Others (supra) is in reference to failure of compliance of Section 7 and 12 and not in reference to Section 10(1) of the CLRA Act but if we look into the scheme of CLRA Act which is a complete code in itself, noncompliance or violation or breach of the provisions of the CLRA Act, it result into penal consequences as has been referredto in Sections 23 to 25 of the Act and there is no provision which would entail any other consequence other than provided under Section 23 to 25 of the Act.

35. Learned counsel for Management has further referred to a decision of Supreme Court in **SLP No.33798-33799 2014,BHARAT HEAVY ELECTRICALS LTD. Vs MAHENDRA PRASAD JAKHMOLA & ORS.**

The relevant portion of the judgment referred to by learned counsel is being reproduced as follows:-

"We, now come to some of the judgments cited by Shri Sudhir Chandra and Ms. Asha Jain. In 'General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lala and Another' [2011 (1) SCC 635], it was held that the well recognised tests to find out whether contract laborers are direct employees are as follows:

"10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workmen is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract laborers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor;

and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant" The expression 'control and supervision' were further explained with reference to an earlier judgment of this Court as follows:

"12. The expression "control and supervision" in the context of contract labor was explained by this Court in International Airport Authority of India v. International Air Cargo Workers' Union thus: (SCC p.388, paras 38-39) "38.... if the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him.

But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) but that is secondary control. The primary control is with the contractor." From this judgment, it is clear that test No. 1 is not met on the facts of this case as the contractor pays the workmen their wages. Secondly, the principal employer cannot be said to control and supervise the work of the employee merely because he directs the workmen of the contractor 'what to do' after the contractor assigns allots the employee to the principal employer. This is precisely what paragraph 12 explains as being supervision and control of the principal employer that is secondary in nature, as such control is exercised only after such workmen has been assigned to the principal employer to do a particular work.

We may hasten to add that this view of the law has been reiterated in 'Balwant Rai Saluja and Another v. Air India Limited and Others' [2014(9) SCC 407], as follows:

"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

(i) who appoints the workers;

(ii) who pays the salary/remuneration;

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [(2011) 1 SCC 635], International Airport Authority of India case [2009 13 SCC 374] and Nalco case [(2014) 6 SCC 756]." C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) However, Ms. Jain has pointed out that contractors were frequently changed, as a result of which, it can be inferred that the workmen are direct employees of BHEL."

36. Another case Bengal Nagpur Cotton Mills 2011 Vol.1 SCC 635 (para-10, 14, 16, 8 and 12) referred to by learned counsel is also the relevant paragraphs of which are being reproduced as follows:-

"The expression `control and supervision` in the context of contract labor was explained by this court in International Airport Authority of India v. International Air Cargo Workers Union [2009 (13) SCC 374] thus: "If the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

37. The case of **Himmat Singh vs ICI India (2008) 3 SCC P**referred to by learned counsel for Management the referred paragraphs of the judgment are being reproduced as follows:-

"A few observations made by the High Court which are relevant need to be noted. It was held by the High Court as follows: "The labor court has held that the petitioners were not working as helpers to the fitters; they were not paid by the company; and were engaged on contract for intermittent work i.e. they did not have regular or permanent work. The work that the petitioners do may be similar to the work of the workmen of the company, but they are not doing the work that is ordinary part of the industry. This is for reason that they- ? did not have permanent work; ? were engaged in intermittent work and ? themselves claimed to be workmen of the contractor Rehman in proceedings under Rule 25 of the Labor Contract Act and got benefit under the same." 9. Similarly, the Labor Court noted that contractor Rehman had applied to the administration for license under the State Contract Labor Act and considering the nature of the contract license has been granted to him. 10. In Steel Authority of India Ltd. v. Union of India &Ors. [2006(12) SC 233] it was inter-alia held as follows: "The workmen whether before the Labor Court or in writ proceedings were represented by the same union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, in our opinion, not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, in our opinion, should not be http://JUDIS.NIC.IN SUPREME COURT OF INDIA Page 3 of 3 allowed to be raised even in an industrial adjudication. Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication." 11. In view of the factual position highlighted above and the ratio of the decision in Steel Authority`s case (supra), the inevitable result is that the appeal is sans merit, deserves dismissal, which we direct with no order as to costs.

38. Airport **Authority of India vs. IndianAirportKamgar 2011 Vol.1 L.L.J page-II Bombay para 32,33,37** referred to by learned counsel for the Management. Wherein, award allowing reference regarding same character of engagement of contract labor was held now allowed in light of facts peculiar to the case referred.

Another case **of Post Master General vs. Tutudas(2007)5 SCC 317.**

Wherein, it has been held that illegal/improper grant of regularization to similarly situated persons does not create and entitlement to regularization on the ground of equal treatment under article 14 of constitution as equality is a positive concept and can not be invoked where any illegality has been committed or where no legal right has been established.

In another case **Dhampur Sugar Mills Vs Bhola Singh AIR 2005 SC page no 1790,** referred to by learned counsel for management it has been laid down that:

completion of 240 days in continuous service may not itself be ground for regularization of service particularly in case when workmen had not been appointed in accordance with rules.

39. The case of **Haldiya Employees Union Vs. Indian Oil Corporation 2005 CAB IC page 2078 SC** also referred to by learned counsel of which relevant paragraphs 15,16,17 & 20 specifically referred by the learned counsel are being reproduced as follows:-

"No doubt, the respondent management does exercise effective control over the contractor on certain matters in regard to the running of the canteen but such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. This however does not mean that the employees working in the canteen have become the employees of the management. A free hand has been given to the contractor with regard to the engagement of the employees working in the canteen. There is no clause in the agreement stipulating that the canteen contractor unlike in the case of Indian Petrochemicals Corporation Ltd. & Another (supra) shall retain and engage compulsorily the employees who were already working in the canteen under the previous contractor. There is no stipulation of the contract that the employees working in the canteen at the time of the commencement of the contract must be retained by the contractor. The management unlike in Indian Petrochemicals Corporation Ltd. case (supra) is not reimbursing the wages of the workmen engaged in the canteen. Rather the contractor has been made liable to pay provident fund contribution, leave salary, medical benefits to his employees and to observe statutory working hours. The contractor has also been made responsible for the proper maintenance of registers, records and accounts so far as compliance of any statutory provisions/obligations are concerned. A duty has been cast on the contractor to keep proper records pertaining to payment of wages etc. and also for depositing the provident fund contributions with authorities concerned. Contractor has been made liable to defend, indemnify and hold harmless the employer from any liability or penalty which may be imposed by the Central, State or local authorities by reason of any violation by the contractor of such laws, regulations and also from all claims, suits or proceedings that may be brought against the management arising under or incidental to or by reason of the work provided/assigned under the contract brought by employees of the contractor, third party or by Central or State Government Authorities. The management has kept with it the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability etc. so as to ensure that the employees/workers are competent and qualified and suitable for efficient performance of the work covered under the contract. This control has been kept by the management to keep a check over the quality of service provided to its employees. It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employee of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering the proper service to the employees of the management."

40. Following settled propositions of law emerges:-

A. The point whether the contract is sham, bogus and camouflage will arise only when the work contract which was allotted to the contractor was of non-prohibited category and also in cases where though the work contract which was allotted to the contractor was of non-prohibited category it become in prohibited category later on under the notification issued by appropriate Government under Section 10(1) of CLRA Act.

B. In reaching at a point whether the work contract was sham bogus and camouflage, the relevant facts for consideration will be as to firstly,who was to exercise the effective supervision and control,secondly,at whose site, the workmen were engaged, thirdly, who paid the wages and fourthly, who provided instruments and training and other facts like this is settled in the aforesaid judgments. It is also settled that what is the effective control and supervision from industry to industry and control and supervision is not only criteria for reaching at the conclusion whether the work contract was sham, bogus or camouflage also what effective control and supervision is shall differ from industry to industry fact wise.

41. Now coming into the facts and evidence in the present case in the light of settled provisions as mentioned in the case laws referred to from both the sides. The case of workmen union on this point is that in fact the workmen were engaged by the Management and in order to deprive them of their legally admissible dues, management set up camouflage contractor and has given the color of work done under the contractor by a contract labor. According to the workmen/union, the management engaged a contractor for payment of less wage as a smoke screen and a camouflage in the eyes of law. The process of which was to deny the rights and other rights to the workmen. The workmen were doing their duties under the strict provisions of management of SECL, they were given vocational training and issued certificate for the job. Tools for the job were also supplied by the management. They worked under the supervision and control of the Management, coupled with the fact that they were engaged in the work of perennial nature in violation of NCWA as well as in violation of CLRA Act because of their work being of prohibited nature also clearly shows that the contract and the contractor as well as theory of contract set up by management is simply a false and fake. It is sham and camouflage to deny the workmen of their legally admissible dues which is proved from record whereas the learned counsel for management has submitted that the overall control and supervision was that of the contractor. The management was only concerned with the work and had limited control and supervision over the workmen. Also, it has been submitted that instrument and vocational training was provided in the light of rules provided in this respect. Payment of wages were made by the contractor under supervision of management as the rules provided for this, hence the fact that the agreement was a sham and a camouflage cannot be held proved, as submitted by learned counsel for management.

42. From the evidence in the form of witness and documents, the management does not deny that the work of the workmen was supervised by management. According to management, it was a limited supervision and control and management also does not deny that work was given to the management by the workmen and also that the instruments ie; light lamp and other instruments were supplied by the management. Management also does not deny that payment of wages was made under their supervision but has put a caveat that payment was made by the contractor under the supervision of management as it was provided in the work agreement & rules.

43. Learned counsel for the workmen further submits that this Tribunal is obligated to lift the veil and see the facts taking into account the total circumstances of the case in coming to the conclusion whether the contract is sham, bogus and nongenuine. He further submits that may be apparently the work contract may appear legal but this Tribunal will have to lift the veil in this case to do full justice between the parties . Learned counsel has referred to para-18 and 21 of the case "**General Manager, Oil and Natural Gas Commission, Silchar Vs. Oil and Natural Gas Commission Contractual workers union, (2008)12 Supreme Court Cases 275**".

1. The relevant portion of the judgement is quoted below: -

*"**Para-18:** ..... **We, however, believe that this present case is not one of regularization simpliciter such as in the case of an ad hoc or casual employee claiming this privilege. The basic issue in the present case is the status of the workmen and whether they were the employees of ONGC or the contractor and in the event that they were the employees of the former, a claim to be treated on a par with other such employees. As would be clear from the discussion a little later, this was the basic issue on which the parties went to trial, notwithstanding the confusion created by the ill-worded reference.***

Para-21:** **Even ONGC had admitted that since 1988, there was no licensed contractor and that wages were being paid through one of the leaders of Union, and one person who was named as contractor, was in fact himself a workmen whose name appeared in acquaintance roll. Real issue therefore was regarding status of workmen as employees of ONGC or of contractor, and it having found that workmen were employees of ONGC, they would ipso facto be entitled to benefits available in that capacity.Issue of regularization would therefore pale in insignificance. The Industrial Tribunal and Division Bench of the High Court were justified in lifting the veil in order to determine nature of employment."

44. Learned Counsel for Management has referred to Judgment of Supreme **Court Oshiar Prasad &Ors. Vs. Employees in relation to management Sudam-D coal washery of BCCI Dhanbad- 2015-ILLJ-513SCpara-25 which is as follows-**

> It is thus clear that the appropriate Government is empowered to make a reference under Section 10 of the Act only when "Industrial dispute exists" or "is apprehended between the parties". Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference.

45. The reference has been mentioned in this Judgment earlier which is regarding the action of the non-regularisation of the workmen , whether it is legal or justified and if it is not then what relief the workmen are

entitled. Hence, **the fact in issue** is whether non-regularization of the workmen who performed various duties in Harad Incline Colliery since 1990 to 1992 is legal and justified or not and **the relevant facts to decide the fact in issue** will get settled in the light of the pleadings of the parties in respect of their rival claims. Hence, there is no question of travelling beyond reference in this case but **while in the process of reaching at the conclusion with regard to the fact in issue, whether the so called agreements were sham or genuine or it is camouflage to deny the workmen of their benefits under law is a relevant fact and to record finding in this respect naturally the veil has to be lifted.**

46. It is further submitted by learned counsel for workmen union that the burden of proof lies on management to prove that the concerned workers are contract labor and also the contract is genuine. Union placed reliance on the judgment reported in the case of ***"Caparo Engineering India Limited Vs. Pradhanmantri Engineering ShramikSanghthan, 2019 (1)MPLJ 147***." The relevant portion is reproduced below: -

> ***"(b) Evidence Act, S.102 – Burden of proof – Petitioner-company's case that employees are contract labor – therefore, Labor Court has rightly shifted burden on them to establish this – No error committed by Labor Court while directing petitioner to lead evidence and prove that respondents are contract laborers (para-31)"***

47. The learned counsel for union alternatively submits that even in the circumstances, the union has not been able to prove that they were working in prohibited category of work notified by the Government of India, even then from the pleadings of the union, the employer-employee relationship between the management and the workmen is clearly established.

48. In all the case laws referred to by the learned counsel for the parties, one thing is common is that the work contracts were in nonprohibited category when they were allotted to the Contractors. They came under prohibited category only later on whereas in the case in hand, on the basis of evidence on record it has been established that the so called work contract between the employer and contractor was prohibited by law being violative of NCWA and notification under Section 10(1) of the CLRA Act prohibiting work of that type being taken by contractors long before the contractor was engaged to execute the work done by the principal employer. Hence, the referred cases can be easily distinguished from the case in hand on this point as mentioned earlier. It is not disputed between the parties that vocational training was given by the Management to the workers, tools were provided by the Management to the workers. Management exercised control and supervision on day to day working of the workmen and wages were paid in person by the Management and its representatives. According to the Management counsel all this was done as it was so provided in the work contract.

49. Reference of Section 2(d) of Indian Contract Act requires to be taken here which define all the contract as it is so because CLRA Act does not define contract. Section 2(d) reads as under:-

> **"Contract is an agreement enforceable by law."**

50. According to **Section 23 of Indian Contracts Act** which deals with the as what consideration and object are lawful and what not is being reproduced as follows:-

> "**what considerations and objects are lawful and what not-....**
>
> **The consideration or object of an agreement is lawful unless-**
>
> **It is forbidden by law, or**
>
> **Is of such nature that,if permitted, it would defeat the provision of any law or is.....**"
>
> **Similary Section 24** of the said Act is also being reproduced as follows:-
>
> "**If any part of a single consideration for one or more objects, or any or any part of several considerations for a single object, is unlawful, the agreement is void."**

51. In the light of the above noted provisions of Indian Contract Act since even the first work agreement between the parties was against prohibitions of law as it defeats the provisions of NCWA and Section 10(1) of the CLRA Act at the very time it was entered into by the parties because these prohibitions were enforced before the agreement was entered into by the parties will be *void ab intio* In law meaning thereby there is no contract at all as per law between the parties. Same will be the fate of other two so called work contracts entered into by the parties after the first work agreement . Thus it is not legally permissible on the part of Management to contend that all the work of supervision, training and other actions detailed earlier were in the light of terms of the work agreement because the said work agreement ar*e void ab initio*, as discussed above right from the date of the agreements. The natural inference/consequences of this will be that it will be deemed that in fact the control of supervision of workers by Management, training of worker's management, providing tools and instruments by Management etc. where done by the Magistrate on their own. It cannot be taken to be done if the work contract is *void ab initio*, admitted is the fact between the parties is that the said workmen worked on the sight which was

owned by the Management i.e. is to say that the work place was the premises of Management i.e. principal employer.

52. Hence following facts are held proved in the light of above discussion which is as follows:-

(1) The work agreement was violative of legal provisions and prohibitions from the date the parties entered into the agreement.

(2) Since the object of the work agreement was to defeat the provisions of law i.e. to say not lawful hence all the three work agreements are *void ab intio* from their date of inception.

(3) As the work agreement are *void ab initio* , hence cannot be held that Management control and supervision and other actions as discussed above,was done by Management in the light of the terms of the work agreement.

53. Accordingly, in the light of above provisions, this Tribunal is constrained **to hold that the work agreement between the principal employer and allotted to contractor was sham, bogus and camouflage, defeating the provisions of law, the sole aim of which was to deprive the workmen of their legally admissible claims, stands proved**.

Issue No.2 is answered accordingly.

54. **ISSUE NO.3:-**

In the light of the findings recorded earlier at Issue No.1 & 2 the workmen who were engaged via the sham and bogus agreement as a camouflage shall be deemed to be under employment of the principal employer which is SECL and are held so.

55. Since the Management has disputed the number and identity of the workmen annexed as a list to the reference, hence the first question arises is how many and who of the list have been proved to be engaged and secondly whether their disengagement is justified in law and fact or not.

56. According to the Management, since the details of the claimant /workmen was not mentioned in the list which was annexure to the reference, the Management filed an application on 26-10-1998 requiring the workman to disclose the particulars of claimants. The Union agreed to comply it and furnished particulars as requested vide order dated 14-1-1999, but submitted incomplete particulars of workmen, disclosing their names, their fathers name, present and permanent address, still the rest of the particulars with regard to their alleged engagement i.e. date of birth, place of work, nature of work, order of termination etc. were not supplied and their photographs were not attested by the Competent Authority, hence the claim of all these 161 persons cannot be taken into account and liable to be rejected.

57. The case of the workmen/union on this point, as stated in their rejoinder, is that it was specifically pleaded that these workmen were engaged between the period 1990 up to 1992. The place of work and the nature of work was already mentioned in the claim which was Kurja Project and the nature of work was as mentioned in the wage agreement between the contractor and the Management. Also, it was alleged that since the dis-engagement was not by a written order, such an order could not be produced. Further it was alleged that under law the Management is under obligation to maintain attendance register and Form-B registers, as well as other relevant registers with respect to these workmen which have been withheld by the contractor and the Management and the workmen are not in a position to collect these registers because these registers are in their custody.

58. The Management has disputed the identity of the claimants mentioned in the Annexure to the reference. There are as many as 161 claimants mentioned as workmen whose claim has been referred to this Tribunal for adjudication. According to the Management, they have filed an application on 28-10-1998, asking the Union to disclose the particulars of the claimants. The Tribunal directed the Union accordingly to supply the particulars as required by the Management vide its order dated 28-10-1998 but submitted vide its application 28-1-1999 incomplete particulars of 34 claimants. The rest of the particulars with regard to their alleged engagement, date of birth etc. were not supplied by the Union. The photographs were also not attested by the Competent Authority, hence at least the claim of the 34 persons could not be taken into account for adjudication, as they were not fully identifiable, furthermore, according to the management, it was also disclosed by Union that names of as many as 19 claimants were in another reference, which is subject matter of another case CGIT/LC/R-86-1998, hence their claims cannot be adjudicated in two cases and their claims also required to be

rejected. On this point, the case of workmen/Union is that in fact the work in mines related to another matter in another cases CGIT/LC/R/86/1998 and the case in hand was done in two span of time that is why some workmen who were engaged at one site later had worked on at another site also. It also comes out from the record that Management had filed an application on 31-7-2001 which is paper No.368/369/370, with a prayer to reject the claim of as many as 44 workmen mentioned in the list as follows:-

S.No.	PARTICULARS OF WORKMEN	Serial No.
1.	Shri Deobed, S/o Dewas	1
2.	Shri Harideo S/o Munna Singh	2
3.	Shri Jairam, S/o Ram Pyare	3
4.	Shri Om Prakash, S/o Mohan.	5
5.	Shri ram Sajiwan, S/o Swawandolal	7
6.	Shri Bhawar Singh, S/o Sukhlal	8
7.	Rita Sukhiya	9
8.	Shri Kapsi, S/o Shyamlal	10
9.	Shri Meghu, S/o Bishambhar	11
10.	Shri Shivlal, S/o Bhaiyalal	12
11.	Shri Birbal, S/o Majar	14
12.	Shri Ram Radhan, S/o Ramlal	15
13.	Shri Rasm Bishal, S/o Budha	16
14.	Shri Akaloom, S/o Bhagwan	17
15.	Shri Barelal S/o Bodhan	18
16.	Shri Bishal S/o Subran	19
17.	Shri Shekhawat S/o Udman	21
18.	Shri Bireshman S/o Bhansai	33
19.	Shri Karamsai S/o Thakur	34
20.	Shri Sukhlal S/o Budhu	47
21.	Shri Jay Singh S/o Sitaram	5-
22.	Shri Ramdin S/o Saldeo	51
23.	Shri Shivmangal S/o Sukhlal	52
24.	Shri Bhailal S/o Ram Das	53
25.	Shri Akhilesh Kumar S/o Bansidhar	
26.	Shri Sanjay Prakash S/o Shyamlal	56
27.	Shri Bhanu Pratap S/o Birendra	57
28.	Shri Rabindra Nath S/o Ram Nihar	58
29.	Shri Arvind Kumar S/o Bahsidhar	60
30.	Shri Anjani KumarS/o Lallan	61
31.	Shri Awdhesh Kumar S/o Bansidhar	62
32.	Shri Om Prakash S/o Dinanath	64
33.	Shri Rajesh Kumar, S/o Jagdish Pandey	65
34.	Shri Avinash Kumar S/o Parmatmanand Prasad.	68
35.	Shri Krishna Kumar S/o Raghunath P	78
36.	Shri Chandra Prakash, S/o Mithilal	95
37.	Shri Amresh, S/o R.C.Choudhary	115
38.	Shri Amarnath, S/o Parmanand	117
39.	Shri Uday Kumar, S/o Udit Singh	118
40.	Shri Ram Biswas , S/o Gangaram	122
41.	Shri Parbailal S/o Gangaram	124
42.	Shri Sampati Kumar S/o Ram Milan	142
43.	Shri Ramnath S/o Ram Kumar	143
44.	Shri Prabhat Kumar S/o Jagdish Prasad	150

59. In its reply to this application, the workmen admitted in reply papers No.371 & 372 that 19 workmen are also included in the reference relating to the second case i.e. CGIT/LC/R/86/1998 and details of as many as 5 workmen could not be gathered by workmen/Union because these workmen has shifted from the site and employed at some other place. Hence, the case of Management that the claim of 44 workmen as mentioned in

their application, mentioned earlier to be refused is liable to be accepted. Accordingly, the claim of these 44 workmen, as mentioned in the list earlier is held liable to be dismissed.

60. Reference of Section 2(oo) of Industrial Disputes Act, Section 25(b)(2), Section 25(f) and Section 25(N) of Industrial Dispute Act,1947 are being reproduced as follows:-

2[(oo) "retrenchment" means the termination by the employer of the service of a workmen for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workmen; or (b) retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer and the workmen concerned contains a stipulation in that behalf;

Section 25.B.(Definition of continuous service):-

Where a workmen is not in continuous service within the meaning of clause(1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) For a period of one year, if the workmen, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workmen employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) For a period of six months, if the workmen, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days , in the cae of wrkman employed below ground in a mine and

(ii) one hundred and twenty days, in any other case.

Explanation-For that purposes of clause(2), the number of days on which a workmen has actually worked under an employer shall include the days on which-

(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders)Act,1946(20 of 1946), or under the Act or under any other law applicable to the Industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) In the case of a female, she has been on maternity leave; soi however, that the total period of such maternity leave does not exceed twelve weeks.

25F. Conditions precedent to retrenchment of workmen.—No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until— (a) the workmen has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; (b) the workmen has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

2 [25N. Conditions precedent to retrenchment of workmen.—(1) No workmen employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workmen has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating

clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workmen, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workmen and the workmen shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workmen who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

61. Now further point arises whether it is proved from the evidence on record that the aforesaid 117 workmen worked for a period of 190 days as mentioned under Section 25 and Section 21(a) of the Industrial Disputes Act,1947 which applies to mines and is applicable in the case in hand or not ?

62. The workmen witnesses have stated that they worked continuously and documents produced by Management regarding contract and execution of work also states that they worked continuously for two years preceding date of their disengagement. There is nothing on record to indicate otherwise, hence as regard to 117 workers as referred above, their case that they worked for a period of 190/240 days in the year preceding their disengagement is held proved.

63. Since it is not the case of the Management that any notice or compensation was given to the workmen, their disengagement is held against law and fact.

Issue No.3 is answered accordingly.

64. **ISSUE NO.4:-**

In the light of the findings recorded while discussing the Issue No.1,2 and 3, now the question arises as to what relief the 117 workers who have been held to be in employment of Management of SECL and their disengagement is legally unjustified

65. According to the learned Counsel for Management, their reinstatement and regularization will not be justifiable keeping in view the facts that firstly the litigants has continued for about 23 years, hence most of the workmen would have crossed the age of superannuation and secondly they cannot be regularized as they were not in service, when the reference was made to the dispute. Learned Counsel for Management has again placed

reliance on case of Oshiyar Prasad (Supra). In the said case of Oshiyar Prasad, the workmen were held entitled to retrenchment compensation.

66. The settled proposition of law is that when the disengagement of the workmen is found violative of Section 25(G) of Industrial Dispute Act,1947 or when it is found that a workman has been retrenched against law , he has to be either reinstated with or without back wages or be given compensation in lump sum as his claim. In the case in hand also the disengagement/retrenchment of the 117 workmen has been held legally unjustified, hence these 117 workmen have the right to be reinstated with or without back wages and service benefits life absorption/regularization etc. or lump sum compensation in lieu of their rights to be paid to them . In the case in hand the dispute first started in 1998 and has taken around 23 years to be decided. Since now many workmen have crossed the age of superannuation, financial condition as well as availability of the work with the employer company is also to be looked into. Hence keeping in view the facts of the case in hand, the ends of justice will be served if a lump sum compensation in lieu of wages after re-instatement, right to regularization and other consequential service benefits be granted to them. In the light of the facts and circumstances of the case in hand , lump sum compensation of **Rs.2lacs(Rs.2,00,000/-)** to each of the 117 workman will meet the ends of justice. Keeping in view the period litigation and its chequered history workmen/union also deserves to be paid the cost of litigation.

Issue No.4 is answered accordingly.

67. On the basis of the above discussion following award is passed.

Accordingly the award is passed as follows:-

A. The action of Management of SECL in disengaging the 117 workmen and not regulalrising them is held unjustified in law and fact.

B. The aforesaid 117 workers are held entitled to get Rs.2 lac (Rs,2,00,000/- each)per person as lump sum compensation in adjustment of their rights.

C. The cost of the litigation Rs. 50,000/-(Fifty thousand only) will also be paid by Management of SECL to the workmen/Union.

68. Let the copies of the award be sent to the Government of India, Ministry of Labor & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 अगस्त, 2021

का.आ. 574.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह–श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 58/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2021 को प्राप्त हुआ था।

[सं. एल-22012/115/2017-आईआर (सीएम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 12th August, 2021

S.O. 574.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. S.E.C.L and their workmen, received by the Central Government on 06.08.2021.

[No. L-22012/115/2017-IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/58/2018

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Sandip Kumar Asati & 2 Others
C/oThe Sub Area Manager
Pali Sub Area of SECL
PO-Nowrozabad,
District Umaria (M.P.)-484555

The Area President
Koyla Shramik Sabha (UTUC),
Old Colliery Gues House Room No.02
Po-Pali Brisinghpur,
District Umaria (M.P.)-484551 ...Workman

Versus

The Chief General Manager,
Johilla Area of SECL,
PO & Distric Umaria,
M.P.-484661 ... Management

AWARD

(Passed on this 22nd day of July-2021)

As per letter dated 12/11/2018 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-22012/115/2017-IR(CM-II). The dispute under reference relates to:

"**Whether the representation of workmen Shri Sandip Kumar Asati, Shri Hare Krishna and Shri Devsharan Asati through an office bearer of a trade union Koyla Shramik Sabha (which is not in the Industrial Relation System of SECL) is legal as per provisions of Section 36 of Industrial Dispute Act, 1947 even in that situation when the applicant is already a member of a trade union which is in the Industrial Relation Suystem of the non-applicant/SECL Company Manaagement? if not, whether their case should be allowed for further adjudication? .**"

"**Whether the action of demotion of workman Shri Sandeep Asati, Shri Hare Krishna & Shri Devsharan Asati from Machenicla Helper Category-II to General Mazdoor Category-I by Sub Area Manager, Pali Sub Area of SECL without giving opportunity of being heard and without following principal of natural justice is justified? If not, what relief the workman Shri Sandeep Asati, Shri Hare Krishna & Shri Devsharan Asati are entitled for?"**

After registering the case on the basis of reference, notices were sent to the parties. Parties appeared and filed their respective statement of claim/defense.

During the Course of hearing, the three workmen filed an application before the Tribunal, with a statement that there grievance has been now redressed by the Management and there is no dispute as put up in the reference to be decided by this Tribunal. They have prayed that a No-Dispute award be passed accordingly.

The Management has also supported the statement of workmen vide application dated 12-7-2021.

The perusal of the file reveals that the dispute was mainly relating to promotion and service benefit, which was accepted by Management and now, there is no dispute to be adjudicated. Accordingly a No-Dispute Award is passed.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 अगस्त, 2021

का.आ. 575.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 21/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2021 का प्राप्त हुआ था।

[सं. एल- 22012/71/2016-आईआर (सीएम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 12th August, 2021

S.O. 575.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2017) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. S.E.C.L and their workmen, received by the Central Government on 06.08.2021.

[No. L- 22012/71/2016-IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/21/2017

Present: P. K. Srivastava, H.J.S..(Retd)

Shri S.K. Gupta
C/O The President
Coal India Pensioners Association,
Branch Bishrampur Area,
Qtr.No.1B-32,
Bishrampur, District Surajpur(CG)
Chhattisgarh-497226 ... Workman

Versus

The General Manager
SECL, Bishrampur Area,
PO-Bishrampur Colliery
District Surajpur (CG) ... Management

AWARD

(Passed on this 26th day of July-2021)

As per letter dated 8/3/2017 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/71/2016(IR(CM-II)). The dispute under reference relates to:

> "***Whether the action on the part of General Manager, Bishrampur Area of SECL in withholding the terminal benefits viz. Leave encashment, Settling Allowance and Plrs and other terminal dues if any, as per eligibility after retirement on ground of alleged company quarter retention by Shri S.K.Gupta Ex-Account Grade-A is justified. If not, what relief the workman is entitled to? .***"

After registering the case on the basis of reference, notices were sent to the parties. The workman did not appear inspite of the fact that speed post notice were held served on him vide order dated 7-1-2021. He did not file any statement of claim.

2. The Management has filed a written statement, wherein it has been stated that a Case No.CGIT/LC/C/18/2016 have been filed by the workman with respect to the same cause of action seeking same relief under Section 33(C) 2 of the Industrial Disputes Act,1947. It was also stated that the workman Shri S.K.Gupta was employed with the Management. He was allotted residential quarter No.IC/42 at Bishrampur colony by virtue of his employment. He retired on 31-8-2012. He was entitled to occupy the residential quarter only till his retirement. He was not permitted to retain the said quarter even after his retirement for many years. He did not hand over the vacant possession of the residential quarter nor did he

deposit any rent, cost of water supply, electricity bill and maintenance etc. Eviction proceedings were initiated before the Estate Officer under public premises (Eviction) of unauthorized occupation Act and it was held by the Estate Officer that he is liable to be evicted from the premises, even by use of force, if necessary. This order was confirmed by the learned District Judge in appeal and was further affirmed by the Hon'ble High Court of Chhattisgarh. Hence the Management was justified in withholding his dues against the arrear of rent etc. as mentioned above, till he vacates the accommodation.

3. Today the Management has filed certified copy of ordersheet of case No.CGIT/LC/C/18/2016 filed by the same workman Shri S.K.Gupta against the same Management with respect to the same cause of action seeking the same relief under Section 33(c)2 of the Industrial Disputes Act,1947 and copy of final order dated 13-1-2021 which has been taken on record. Since the previsous proceedings under Section 33(C) 2 of the Act was between the same parties, which was heard and decided by this Tribunal with respect to same cause of action and same relief, the second case is barred by **Res Judicata.** Accordingly the workman is held entitled to no relief.

On the basis of the above discussion, following award is passed:-

A. The action on the part of General Manager, Bishrampur Area of SECL in withholding the terminal benefits viz. Leave encashment, Settling Allowance and Plrs and other terminal dues if any, as per eligibility after retirement on ground of alleged company quarter retention by Shri S.K. Gupta Ex-Account Grade-A is justified in law.

B. The workman is held entitled to no relief.

C. No order as to costs.

Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 अगस्त, 2021

का.आ. 576.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 20/1991) को प्रकाशित करती है, जा केन्द्रीय सरकार का 06.08.2021 को प्राप्त हुआ था।

[सं. एल-22012/286/1990-आईआर (सीएम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 12th August, 2021

S.O. 576.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/1991) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. S.E.C.L and their workmen, received by the Central Government on 06.08.2021.

[No. L-22012/286/1990-IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/20/1991

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Bansiwale Banjare
C/O General Secretary
M.P. Koyla Khadan Mazdoor Union (UTUC)
Chirmiri, Post Chirimiri,
District Sarguja (MP),
now Chhattisgarh. ... Workman

Versus

The General Manager
South Eastern Coal Fields Ltd.
Chirimiri Area
P.O.Chirimiri
District Sarguja (MP)
now Chhattistarh ... Management

AWARD

(Passed on this 30th day of July-2021)

As per letter dated 7-2-1991 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No.22012(286)/90 IR(C-II). The dispute under reference relates to:

"**Whether the action of the management of Chirmiri Colliery of SECL Ltd., in dismissing from services of their workman Shri Bansiwala Banjare, Chirmiri Opeh Cost is legal and justified. If not to what relief the workman concerned is entitited to ?.**"

1. After registering the case on the basis of reference, notices were sent to the parties.

2. According to the statement of claim the applicant workman Bansiwala Banjare, deceased during the proceedings was working with the Management as Clerk Grade-II in Chirimiri Colliery. He was Trade Unionist and was an active member of Revolutionary Socialist Party and its Trade Union. He used to raise matters relating to welfare of workers and illegal activities of the Management. He had raised the illegal purchases done by Shri S.N.Trivedi, the Mines Manager with a view to retribute. He was implicated in a false charge by the Management vide its order dated 2-4-1998. He was served with a charge sheet alleging that while he was working as a reliever in MTK Chirimiri Open Cost, he has marked attendance in' Form-C and Form-D' in respect of nine workman, though they were not on duty, which was a misconduct under Clause 21(2) of the Certified Standing Orders of Chirimiri Colliery. The charge leveled against the workman was vague because there were no Certified Standing Orders with respect to Chirimiri Colliery in existence at any point of time. A Departmental inquiry was conducted ignoring all the principles of natural justice and law without considering the reply of the workman, the required documents were not given to the workman. The inquiry was conducted in a way to prejudice the defense and Inquiry Report wrongly holding the workman guilty of the charge was submitted by the Inquiry Officer. The Disciplinary Authority passed the impugned sentence of dismissal of the workman on the basis of such a defective Departmental Inquiry, inspite of the fact that no charges were proved against the workman. The Controlling Authority also dismissed the appeal summarily, which is against law. The workman prayed that he be reinstated with all back wages and benefits holding the inquiry and sentence illegal.

3. The Management has, in its written statement of defense, refuted the allegations, stating that the inquiry was conducted as per law. The workman did participate in the inquiry. The charges were rightly proved and the punishment was also not disproportionate to the charge.

4. On the basis of pleadings, a preliminary order regarding the legality of the inquiry was framed by my learned Predecessor, which is as follows:-

"Whether the Departmental Inquiry conducted by Management against the workman is legal and proper.?"

5. On the basis of evidence on record, my learned Predecessor held the departmental inquiry against law and fact, vide his order dated 9-8-2012. In the meantime the workman died, hence my learned Predecessor did not give opportunity to Management to prove the charges before the Tribunal by legal evidence, on the ground that the charges were personal liability of the deceased workman.

6. This order of my learned Predecessor was challenged by Management before the Single Bench of Hon'ble High Court of Chhattisgarh in Writ Petition(L) No.195/2012 which was dismissed by the Single Bench vide its order dated 6-2-2013. An appeal against this order was also dismissed in Writ Appeal No.344/2013 by Division Bench of Hon'ble High Court of Chhattisgarh vide its order dated 19-6-2013. An SLP No.34740-34741/2013 was also dismissed by Hon'ble the Apex Court vide its order dated 29-4-2019. This order dated 9-8-2012, passed by my learned Predecessor, is part of this award.

7. Thereafter, legal heirs of the deceased workman were brought on record. They did not propose any evidence to be adduced. The Management also closed evidence , hence argument of Mr. Shailendra Pandey, learned counsel for the workman and Shri A.K.Shashi, learned counsel for the Management were heard by me. The workman side has filed written arguments also, which is part of the record.

8. The workman side has relied on following case law :-

Deepali Gundu Suwase Vs. Kranti Junior Adhyapad Mahavidyalaya (2013) 10 SCC 324

9. The Management side has relied on following case law:-

Rajasthan State Road Transport Corporation Vs. Phool Chand(Dead) through LRs (2019)LAB.I.C.36

10. The following additional issues arises for determination after perusal of record, in the light of rival arguments:-

ADDITIONAL ISSUE NO. 1:-

"Whether the charges against the workman stands proved by evidence on record?"

ADDITIONAL ISSUE NO.2:-

"Whether the punishment awarded is disproportionate to the charges warranting interference by this Tribunal."

11. ADDITIONAL ISSUE NO. 1:-

As stated earlier, the departmental inquiry conducted, has been held against law by my learned Predecessor, while disposing Preliminary Issue No.1. Since the workman against whom the charges were made and punishment was awarded, had died during the proceedings, the opportunity of proving the charge was not given to Management by my learned Predecessor. This order was affirmed by Hon'ble the Apex Court. Since the Inquiry has been found vitiated and there is no other evidence to prove the charges, it will be proper to hold that the charges against the deceased workman were not proved.

Additional Issue No.1 is decided accordingly.

12. ADDITIONAL ISSUE NO. 2:-

In the light of finding on Additional Issue No.1, the workman would have the right to be reinstated, had he been alive. Since he is dead now, his reinstatement shall be notional, only for the purposes of counting his benefits. On the point whether the reinstatement should be with or without back wages, learned counsel for workman has referred to the case of **Deepali Gundu Suwase (supra), the following observation of Hon'ble the Apex Court are being reproduced on this point:-**

"38. The propositions which can be culled out from the aforementioned judgments are :

38.1. In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

38.2. The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against the employee/ workman, the financial condition of the employer and similar other factors.

38.3. Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/ workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

38.4. The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11- A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and/or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved then it

will have the discretion not to award fullback wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charges then there will be ample justification for award of full back wages.

38.5. The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Court should not exercise power under Article 226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful/illegal termination of service, the wrong doer is the employer and sufferer is the employee/workman and there is justification to give premium to, the employer of his wrong doings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

38.6 In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases, it would be prudent to adopt the course suggested in *Hindustan Tin works Private Limited V.Employees of Hindustan TinWorks Private Limited* (supra).

38.7 The observation made in*J.K. Synthetics Ltd. V. K.P.Agrawal* (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to here-in-above and cannot be treated as good law.This part of the judgment is also against the very concept of reinstatement of an employee/workman.

Furthermore, in *Tapash Kumar Paul V. BSNL (2014) 4 SCR 875 :[2014(6) SLR 538 (SC)],* it is held :-

"Therefore, in the light of the decision of this Court in Deepali Gundu's case (supra) which has correctly relied upon higher bench decisions of this Court in Surendra Kumar Verma's case (supra) and Hindustan Tin Works Pvt. Ltd. (supra), I am of the opinion that the appellant herein is entitled to reinstatement with full back wages since in the absence of full back wages, the employee will be distressed and will suffer punishment for no fault of his own."

The learned Counsel for Management has referred to ***Rajasthan State Road Transport Corporation Vs. Phool Chand(Dead) through LRs*** *(2019)LAB.I.C.36, wherein it has been held:-*

"that there is no pleadings or evidence to show that the workman was not gainfully employed during the period , back wages should not be granted to him."

14. Hence granting of back wages depends whether the workman could successfully prove that he was not employed gainfully in this case. On this point, there is an affidavit of the widow of the deceased workman who has not come forward for cross-examination. Hence, such an affidavit cannot be relied upon, on this point. Accordingly, holding that the workman side could not prove the fact that he was not employed gainfully during this period, he is not held entitled to back wages, on the principal of no work and no pay. Though he is held entitled to all other service and retiral benefits, deeming him to be in continuous service of the Management, without break, till date of his superannuation.

Additional Issue No.2 is decided accordingly.

15. On the basis of the above discussion, following award is passed:-

A. The action of the management of Chirmiri Colliery of SECL Ltd., in dismissing from services of their workman Shri Bansiwala Banjare(dead), Chirmiri Opeh Cost is illegal and unjustified.

B. The Legal Representatives of the deceased workman are held entitled to all service cum retiral benefits excluding back wages, deeming the deceased workman reinstated and in continuous service, till date of his superannuation.

C. No order as to costs.

16. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 अगस्त, 2021

का.आ. 577.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मेसर्स एस.ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण–सह - श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 86/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 06.08.2021 को प्राप्त हुआ था।

[सं. एल-22012/117/1997-आईआर (सीएम-2)]

राजेन्द्र सिंह, अवर सचिव

New Delhi, the 12th August, 2021

S.O. 577.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 86/98) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the Management of M/s. S.E.C.L and their workmen, received by the Central Government on 06.08.2021.

[No. L-22012/117/1997-IR (CM-II)]

RAJENDER SINGH, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, JABALPUR

NO. CGIT/LC/R/86/98

Present: P. K. Srivastava, H.J.S. (Retd)

The Secretary
Rashtriya Colliery worker Federation
(INTUC), Camp-B, 19, Ravinagar Colony
Post Jhimar Colliery,
District Shahdol. ... Workman

Versus

The Chief General Manager
SECL Ltd., Hasdeo Area,
South Jharkhand Colliery,
District Sarguja (M.P.) ... Management

AWARD

(Passed on this 20th day of July-20201)

1. As per letter dated 24-4-98 by the Government of India, Ministry of Labor, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-22012/117/97-IR(C-II). The dispute under reference relates to:

> "***Whether the action of the General Manager, Hasdeo Area of SECL is not regularising 113 workers(list enclosed)who have been performing various jobs at Sheetal Dhara underground Colliery since December,1994 is legal and justified?, if not, to what relief these workmen are entitled to?*** ."

1. After registering the case on the basis of reference, notices were sent to the parties.

2. The workman/union alleged in its statement of claim that Rashtriya Colliery Workers Federation is under the provisions of Trade Union Act and is affiliated to National Labor Organization, a Central Trade Union. The Union represents the cause of workers. The list of 113 workers enclosed with the reference with regard to their regularization and declaration that they are workers of the Management being engaged in the prohibited category of work. The respondent company is a company registered in Companies Acts and its shares are vested with the Central Government which has total control of working, function and management of the company. After nationalization of the coal business in 1973 by the Coal Nationalization Act, the Company is covered under the meaning of "State" as mentioned in Article 12 of the Constitution. The business of the company is coal production for which it has taken various projects and coal mines .One of the Project which was taken by the Management was Sheetal Dhara Coal Mines, it was an underground coal mine. The Sheetal Dhara underground was started and the annual capacity of the coal mine w80 M.T. They have constructed the mines and incline up to a depth of 526 meters. The finalization of shaft sinking at Kurja and Sheetal Dhara Project started infra-structure along with establishing shaft sinking. For the purposes of starting and opening of the Sheetal Dhara Coal Mines, the Management issued tender notices on 2-7-1993 and 5-8-1993. Tenders were invited for all the works at Sheetal Dhara Project Shaft Sale No.1 Incline at Hasdeo Area for open excavation, walling roofing and drivage of incline for shaft No.1 Incline. It was clear from the tender notice that the work was of over burden, removal and earth cutting as well drivage of shaft underground. An agreement was entered between the Management and the Contractor M/s Ambika Enterprises on 6-3-1995 for the works as mentioned in the tender notice. The workers mentioned in the list to the reference total 113 were employed for execution of the said work by Management through the Contractor for the period from 7-10-1994 upto 1-4-1997 for the work of Over burden removal, earth cutting, stone cutting, drivage of stone and Misc. Stone cutting underground, open excavation, walling Roofing, drivage of incline Shaft of Sheetal dhara Project. Also the Union submitted a representation to the Assistant Labor Commissioner Central that the workers were employed in Over burden removal, earth cutting, stone cutting, drivage of stone and Misc. Stone cutting underground, open excavation, walling Roofing, drivage of incline Shaft of Sheetal dhara Project and they were not being paid wages as per statutory rules. It was also noticed that they were engaged for a prohibited work under Contract Labor Regulation Act which goes to strengthen the case of allegation of the workman/union that the workers were engaged by the Contractor in a work of prohibited category and they were engaged in underground mine in regular nature of work. Under the safety rules, the Management prepared Form-B register of the workers, which were not counter signed by the contractor Ambika Enterprises. According to the workman/Union, as per definition Clause'H' of Mines Act, 1952:-

> **"the persons is said to be employed in underground, who works as the Manager or who works under appointment by the agent or manager of the mines or with the knowledge of the Manager whether for wages are not? In operation of service relating to the development of the mines, including construction of plant therein and in operating servicing, maintaining or repairing any part of machinery used in or about the mines in any kind of work, what so ever which is preparatory or incidental to or connected with mining operations".**

Hence, the workers employed in the case in hand shall be deemed to be mining workers and covered under provisions of National Coal Wage Agreement. It was also alleged that vide its notification issued by the Central Government under Section 10 of the Contract Labor Regulation Act, there has been a prohibition for employment of contract worker for execution of following works:-

(a)-Raising or raising-cum-selling of coal;

(b)-Coal loading and unloading;

(c) -Overburden, removal and earth cutting;

(d)-Soft Coke manufacturing;

(e)-Drifting of stones, drift and Misc. stone cutting.

3. Hence, according to the workman/union, the workman in the list were engaged for activities which come under category of prohibited activity, for which contract workers cannot be engaged. Since the workers were not paid according to the National Coal Wage Agreement, inspite of the fact that they were shown to be engaged through contractors, which was not permissible in law, as the work for which they were engaged was of prohibited category and perennial in nature, the Union raised this issue with the Management and demanded their regularization and the declaration that they were workers of Management, the principal employer Company. The Management refused to accept the demand of workman Union, hence a dispute was raised and after failure of conciliation the reference was sent to this Tribunal for Award. The workman/Union has prayed that the workers mentioned in the list attached to the reference, be held workman of Principal Employer of the Management Company and not of the Contractor and the action of Management in not regularizing them, be declared against law.

4. The case of the management, in its written statement of defence is mainly that, the reference order is bad in law and not maintainable on the ground that the enclosed list of names of claimants is incomplete, vague and it is not possible to identify all the workers. The workman/Union has not filed any detailed particulars of the workers mentioned in the list attached with the reference with their fathers name, age, sex, present and permanent address, date, nature and place of work as well as date of their dis-engagement. Also it was pleaded that on application of Management dated 26-10-1998, the Tribunal directed the union to supply these particulars vide its order dated 26-10-1998. The Union did provide the details on 24-3-1999 which was incomplete with respect to 111 claimants. Photographs were not attested by competent authority nor was work details provided, hence claim of 111 claimants should not be taken into account. It was further pleaded by Management that the claimants were engaged through the contractor M/s Ambika Enterprises who have not been impleaded in the dispute, on this ground also the reference is not maintainable. The workers are the employees of the contractors, who is a necessary party. The Management has flatly denied that the work was for prohibited category and /or was of perennial nature. According to the Management, the work was Excavation, walling roofing drivage of incline shaft of Sheetal dhara Project of Hasdeo Area which was to commence from 7-10-1994 till 1-4-1997. Tenders were floated for the work and lowest was awarded to M/s Ambika Enterprises. The work was of purely civil nature of construction of coal mine through drivage of Inclined Shaft. It is also the case of Management that Union had raised the same dispute before the Conciliation Officer, which ended in failure on 24-3-1998. Report was sent to the Ministry and Ministry did not think fit to send any reference for adjudication. This refusal was communicated to the workman/Union vide letter dated 6-12-1998. The workman preferred a writ before Hon'ble High Court of Madhya Pradesh at Jabalpur and it was under the directions of Hon'ble High Court, the present Reference has been sent to this Tribunal for adjudication. Thus according to the Management, the work was of purely civil nature and it was neither prohibited nor of perennial nature, hence the workman were not the workers of the Management, rather they were the workers of Contractor, hence according to the Management, they cannot claim themselves to be workman of the Management and also they cannot claim themselves to be regularized with the Management. Accordingly, it has been prayed that the reference be answered against the workman.

5. Both the parties have filed rejoinder, wherein they have mainly reiterated their claim/defense.

6. The workman side has filed and proved following documents:-

(Exhibit W-1):- Coal Quality Improvement fortnight.

(Exhibit W-2):-Tender for work.

(Exhibit W-3):-Letter issued by M/s Ambika Enterprises contractor on 22-7-1994 regarding rates for drivage of inclined shaft.

(Exhibit W-4):-Letter dated 19-6-1994 issued by contractor Ambika Enterprises.

(Exhibit W-5):-Another letter by contractor M/s Ambika Enterprises quoting rates of open excavation, foofing and drivage of incline shaft.

(Exhibit W-6 & 7):-Different letter on different dates issued by contractor bidder M/s Ambika Enterprises.

(Exhibit W-8 & 9):-Representation by Union regarding regularization of the workmen.

(Exhibit W-10):-Letter regarding failure of conciliation sent by Assistant Labor Commissioner to Ministry of Labor on 10-3-1997.

(Exhibit W-11 and 12):-Notification of Govt. of India dated 21-6-1998 regarding works for which employment of contract labor has been prohibited.

(Exhibit W-13):-Letter issued by Director Mines Safety requiring names of employees whether employed directly or through contractor which have been entered in Form-B register and their attendances being recorded in relevant registers.

(Exhibit W-14):- Vocational training certificate of workman Akhilesh Kumar Singh.

(Exhibit W-15):-Letter issued by Deputy CME, Kurja Mines regarding status of works.

7. The workman side has also filed identification slip and attested photographs of workmen (113) mentioned in the list attached with application bearing No.114 dated 14-1-1999.

8. The Management side has filed and proved following documents:-

a. **(Exhibit M- 1):-**Tender Notice dated 2-7-1993.

b. **(Exhibit M- 2):-**Corrigendum dated 5-8-1993 to tender notice.

c. **(Exhibit M-3):-**Detailed notice inviting tender including general

d. terms and conditions, safety code, work details etc.

e. **(Exhibit M-4):-** Copy of agreement dated 6-3-1995 between the Management and contractor M/s. Ambika Enterprises.

f. **(Exhibit M- 5)**:-First bill claim for the period 2-9-1994 to 10-3-1995.

g. **(Exhibit M-6)**:-Second bill claim for the period 11-3-1995 to 6-1-1996.

h. **(Exhibit M- 7):-**Third bill claim for the period 7-1-1996 to 3-2-1996.

i. **(Exhibit M- 8)**:-Fourth bill claim for the period 4-2-1996 to 6-4-1996.

j. **(Exhibit M-9 to M-16)**:- are also different bills for different period regarding the same and same site.

Some of the Bills are not even exhibited.

k. **(Exhibit M-27 & M-28)):-**Are the project report and revised project report for Kurja underground project.

l. **(Exhibit M-29 to M-51):-** are certified copies of the tender work agreement, work license and extensions granted to the contractor at different interval till conclusion of work, to be referred to as and when required.

9. The workmen/Union has examined the following witnesses on oath, who have been cross-examined by Management :-

Witness No.1:- Mushtaq Khan S/o Basheer Khan.

Witness No.2:- Khoobilal Vishwakarma S/o Bhaiyalal Vishwakarma.

Witness No.3 Videshi Singh S/o Long Singh.

Witness No.4 Bindwasni Prasad Oja S/o S.K.Ojha.

Witness No.5 Rajdev Singh S/o Hansnat Singh

10. The workman side has filled affidavits of other workman also but they have not come forward for cross-examination, hence their affidavits cannot be read in evidence, in support of their case.

11. The Management has examined its witness Shri S.K.Shrivastava, General Manager, Hingula Area and Shri Gajanand Chourasia, Senior Manager on oath who have been cross-examined by workman union. Shri Suresh Dave, Partner in the firm M/s Ambika Enterprises who was awarded the contract, has also been examined on affidavit and has been cross-examined by Management.

12. I have heard arguments of learned Counsel for workmen/Union Shri R.C.Shrivastava and Shri A.K.Shashi, learned counsel for the Management. Parties have filed memorandum of arguments which are taken on record. I have gone through the records, written submission made by parties and also the case law relied to by the parties.

13. Following points arises for determination in the case in hand, as it appears from the perusal of the record, in the light of the rival arguments.

14. "1: Whether the workmen were engaged in work of prohibited category.

2: Whether the alleged contracts where sham and bogus, rather a camouflage to deprive the workmen of their benefits.

3: Whether the disengagement of workmen is justified in law and fact.

4: Whether the workmen are entitled to any benefits."

15-Issue No 1.

According to the respective claims of the parties in this case, it is alleged from the side of the Workmen that the said contract is of prohibited category on two grounds **Firstly,** because it was work of perennial/regular nature and **Secondly,** it was prohibited by notification of Government of India dated 21-1-88.

Section 1 Sub-Section (5) of the'CLRA Act'is relevant here which is being reproduced as follows:-

"(a) It shall not apply to establishments in which work only of an intermittent or casual nature is performed. (b) If a question arises whether work performed in an establishment is of an intermittent or casual nature, the appropriate Government shall decide that question after

consultation with the Central Board or, as the case may be, a State Board, and its decision shall be final.

Explanation.-- For the purpose of this sub-section, work performed in an establishment shall not be deemed to be of an intermittent nature—

(i) if it was performed for more than one hundred and twenty days in the preceding twelve months, or

(ii) **(ii) if it is of a seasonal character and is performed for more than six months in a year."**

16. Learned Counsel for the Workmen/Union has further referred to Clause **11.5.1 of the agreement of NCWA 4/5** which reads as follows:-

"Industries shall not apply labors through contractor or engage contractor's labor on jobs of permanent and perennial nature."

17. Learned Counsel further refers to Notification of Government of India dated 21-6-1988 on record **which prohibits contract labor** in following jobs :-

SCHEDULE

1. Raising or raising-cum-selling of coal;
2. Coal loading and unloading:
3. Over burden removal and earth cutting:
4. Soft coke manufacturing
5. Driving of stone drifts and miscellaneous stone cutting underground:

Provided that his notification shall not apply to the following categories:-

(a) Quarries in the North-East Coal Field which can only be worked for a few months every year due to heavy rainfall in the area:

(b) Quarries located by the side of the river in Pency valley and similar other patch deposits which can only be worked when the level of river has gone down and during non-rainy seasons;

(c) Loading coal when there is mechanical failure, failure of power or irregular supply of wagon by the railway; and

(d) Cutting stone drifts/faults which cannot be detected in advance and are of short duration, say up to six months.

18. It is in the argument of learned Counsel of Workmen that since there was in prohibition of NCWA and CLRA Act, as mentioned above, hence the work for which the so called contractor is alleged to have been engaged of prohibited nature which could not be done through contractor. On the other hand, learned counsel for Management has submitted that **firstly**, the work is not of perennial nature as mentioned in Section -1 Sub-Section 5 of the CLRA Act 1972 and **secondly,** the evidence on record as well documents regarding the issuing of tender and work agreement as well as work order no where show that the said got executed through the contractor was of prohibitory category as mentioned in the notification dated 21-6-1988.

19. The management witness Shri S.K. Shrivastava, General Manager has stated on this point that being Manager he was responsible for execution of excavation, walling, roofing, drivage of Incline shaft of Sheetal Dhara Project of Hasdeo area. The Management issued a tender notice dated 2-7-1993 inviting tender from registered contractors for execution of the aforesaid work. Corrigendum letter were issued regarding the tender by the Chief Engineer. A detailed notice inviting the tender, general terms and conditions , safety code, general abstract of cost, common parameters for man power etc. special condition for drifting of inclined shaft, additional terms and conditions, etc. were also issued to three contractors namely viz M/s Ambika Enterprises, M/s Western India Mining Service and M/s Minor Mineral Exploration Corporation submitted tenders in this respect on 5-10-1993. The Tender of firm/s Ambika Enterprises was accepted and work was awarded to Ambika Enterprises vide letter dated 8-8-1994. The Agreement was executed and singed between the Management and Contractor. The Contractor obtained license regarding the work from Licensing Authority. The work was of pure civil nature. The work could not be completed within the stipulated period of time, hence the Contractor was granted an extension to complete the work up to 30-9-1993 which was further extended at the request of the Contractor. The contractor had availed license from Licensing Authority appointed under Contract Labor Regulation Act, 1970 for engaging contract labors. The Office of Assistant Labor Commissioner issued license on 25-10-1994. The Licensing Authority also issued license to the contractor for engaging contract labor from time to time, mentioned in the license. This witness also stated that the work was

not under prohibited category, rather it was of civil nature and temporary. It was also not perennial in nature. Vocational training is given to all persons irrespective of their status of contract labor or regular employees as per rules for the purposes of safety. The Job of coal loading, blasting etc. was never done through contract labor. On his cross-examination on these statements, this witness has stated that he does not remember any notification issued under Section 10 of the Contract Labor Regulation & Abolition Act. He also reiterated that the work was not in prohibited category nor was it of perennial nature. He denied that digging Incline, laying down lines, loading, making holes for blasting, arranging explosives was done by contract labor. The Overman and Mining Sardar employed by Management used to supervise the work of those who used to go inside the mines underground and used to make attendance on form-C. Instruments like lamps etc were issued to contract labor by the Management.

20. The other witness Gajananand Chourasia, Senior Manager has corroborated the statement of Manager witness Shri S.K.Shrivastava. he has proved the bill of payments.

21. The Contractor Shri Suresh Dave who happens to be the partner of Contractor M/s Ambika Enterprises has also been examined. He has stated on the point of filing tenders, acceptance of his offer by Management and examination of work agreement. He also states that as the work could not be completed within the stipulated time, it was extended from time to time. He further states that he has obtained license to engaged contract labor from Licensing Authority under Contract Labor Regulation & Abolition Act. He further stated that his firm never engaged 113 number of laborers at any point of time as is the case of the workman/union and states that he engaged only such number of persons for which the firm was permitted to engaged against the license. The work was relating to excavation, walling, roofing, drivage of Inclined Shaft of Sheet Dhara Project. He further stated on cross-examination that the affidavit of laborers were examined by the Management on Form-C. The work was supervised by the employees of the management. Form-B of all the laborers was prepared.

22. From the statement of three management witness, it is established that the work which was to be completed within six months as per the official tender, actually continued for more than two years to complete. Therefore, in the light of this finding the case of Management that the said order was of casual /intermittent nature to be completed within six months, hence it is not a work of permanent or perennial nature and is liable to be rejected. **On the basis of the evidence on record, the fact that the work got executed by Management through alleged contractor was of a permanent/perennial nature for which the contract labor is prohibited as per Section 1 of sub-section(5) of CLRA Act 1970 is held proved**.

23. As regards, **the second ground taken by workmen that the work was of prohibited category** in the light of notification of 1988, which has been referred to earlier in this Judgment. According to the learned counsel for the workmen the work allotted was driving of stone drifts and miscellaneous stone cutting under ground hence it was a prohibited job for which Notification under Section 10(1) of CLRA Act was issued in 1988. On the other hand , it has been submitted by learned counsel for management that in fact the work was allotted for drivage of stone refits and miscellaneous stone cutting underground was taken from the applicants. Learned counsel has referred to the Proviso-D of the said notification of 1988 wherein cutting stone rifts/faults which cannot be detected in advance and are of short duration say upto six months is exempted from prohibition and has submitted that unforeseen stone layer coming in the way while executing the work of drivage of inclined shaft are to be of short duration hence cannot be covered under the prohibition as prohibited. This argument has been rebutted by learned counsel for workmen/union with an argument that evidence on record in form of statement of witnesses and documents and as proved that in the garb of drive of incline shaft in the so called agreement work of driving of stone drifts and misc. stone underground cutting was taken from the workmen. Learned counsel has referred to the statement of the workmen witness in this respect firstly .The contractor stated that their main work was breaking stones, loading stones, making holes for blasting. They also worked for removing sand and reloading stone for construction of incline . They worked under the supervision of the Management of the Company. In his cross-examination, the workmen has stated that they were allotted different duties by the Mining Sardars and Overman. They also stated that the instruments were given by the management and not by the Contractor. They were given training for work.

24. From the statement as well as Project Report M-27 and M-28 it is established that possibility of cutting stone drift/blasts was not ruled out in the project report and by the management. Hence, the arguments of learned counsel for management that it could not be detected in advance, fails in the light of above discussion. It is held proved with the work continued for two years i.e. more than six months, hence on the basis of these proved facts Proviso-D of the notification could not apply to the case in hand on the basis of the evidence as discussed above, it is held proved that the workmen were engaged in driving of stone drifts and misc. stone cutting underground while taking the work of drivage of Incline which was known to the management in advance and they were not of a short duration of six months rather they continued up to two years.

25. Accordingly, the claim of the workmen union that the work done was prohibited vide notification of July-21-1998 and was classified in a prohibited category which could not be taken by contract labor as proved under Section 10(1) of CLRA Act.

26. On the basis of the finding recorded above holding that firstly, the work was of perennial nature for which employment of contractor was prohibited under Section 11.5.1 of NCWA- IV/V and secondly, the work was of prohibited nature as provided under Clause 5 of Schedule of prohibited works in the prohibition notification June-21-88. Issue No.1is answered in favor of workmen.

27. ISSUE NO. 2:-

Before entering into examination of evidence on this issue produced from both the sides, it is proper to refer to the case laws referred to by both the side learned counsel in this respect is as under-

28. The learned Counsel for workmen/Union has referred to case law **Hussainbhai, Calicut Vs. The Alath Factory Thezhilali Union, Kozhikode and others, (1978)4 Supreme Court Cases 257**. The relevant portion is reproduced below: -

> *"Labor and Industrial Law – Industrial Disputes Act 1947 – Section 2(s) – Employer and employee relationship – Workmen employed by independent contractor to work in employer's factory – Whether "workmen" – Tests for determining*
>
> *The petitioner is a factory owner manufacturing ropes. A number of workmen were engaged to make ropes but they were hired by contractors who had executed agreements with the petitioner to get such work done. When 29 of those workmen were denied employment, an industrial dispute was referred by the State Government and the award was attacked on the ground that the workmen were not workmen of the petitioner but only of the contractor. The High Court rejected the contention. Dismissing the appeal, the Supreme Court.Held: The facts found are that the work done by the workmen was an integral part of the industry concerned, that the raw material was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade. The workmen were broadly under the control of the management and defective articles were directed to be rectified by the management. This concatenation of circumstances is conclusive that the workmen were the workmen of the petitioner.*
>
> *(Para-2)*
>
> *The true test is where a worker or group of workers labor to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship ex contrctu is of no consequence, when, on lifting the veil or looking at the conspectus of factors governing employment, the naked truth is discerned, and especially since it is one of the myriad devices resorted to by managements to avoid the responsibility when labor legislation casts welfare obligations on the real employer based on Arts. 38, 32, 42, 43 and 43A. If livelihood of the workmen substantially depends on labor rendered to produce goods and services for the benefit and satisfaction of enterprise, the absence of direct relationship or the presence of dubious intermediaries cannot snap the real life-bond. If, however, there is total dissociation, in fact, between the disowning management and aggrieved workmen, the employer is in substance and in real life-term, by another.*

29. Learned Counsel for workmen has further referred to following case laws-***Gujarat Electricity Board, Thermal Power Station, Gujrat Vs. Hind Mazdoor Sabha, 1995-II-LLJ-790***

> *Industrial Disputes Act, 1947- Sec. 2(k), 2(s), 10(2) – Contract Labor (Regulation & Abolition) Act 1970- Sec.10 – Abolition of contract labor – industrial dispute – jurisdiction of Labor Court under Industrial Dispute Act – Jurisdiction of Appropriate Government has exclusive jurisdiction to decide in regard to abolition of contract labor – section 10 of the Contract Labor Act would come into play only in cases of genuine contract and not when contract is sham or camouflage – contract Labor abolition act does not provide for status of the contract labor after abolition – Industrial Tribunal whether have jurisdiction to direct principal employer to absorb erstwhile workmen of the contractor and also determine the terms and conditions – Industrial adjudicator will determine the status of a workmen or abolition of contract labor, if industrial dispute was pending before him on date of abolition of contract labor system by appropriate government – workmen of erstwhile contractor can raise dispute on the basis that they are workmen of principal employer and dispute in such cases would be not for abolition of contract labor, but on the footing that workmen were always employees of principal employer - "*

30. ***Secretary, Haryana Electricity Board Vs. Suresh and others, AIR-1999-SC-1160***.

"(E) Contract Labor (Regulation and Abolition) Act (37 of 1970), S.10 – Contract Labor – Absorption in service- Electricity Board – Work of keeping plants and station clean and hygienic awarded to contractor- work not of seasonal nature – contract itself stipulating number of employees to be engaged by Contractor – Overall control of working of contract labor including administrative control remaining with the Board – Board neither registered as principal employer nor contractor was licensed contractor – Contract system was thus a mere camouflage which could be easily pierced and employer employee relationship between Board and employee easily visualized – Employees who have worked for more than 240 days cannot therefore be denied absorption."

31. Learned counsel has referred following para (Paras 15, 17, 19),being reproduced as follows-

`15- It would in this context, however, be convenient to note the observations of the High Court as below:-

"The learned counsel for the petitioner has tried to argue that the findings of fact arrived at by the Labor Court was not based upon proper appreciation of evidence. This plea cannot be accepted in as much as the Labor Court has referred to the whole of the evidence lead in the case before coming to such a conclusion. Otherwise, also in view of the law laid down by the Supreme Court in R.K. Panda's case (supra) the findings of fact arrived at by the Labor Court cannot be set aside in writ jurisdiction particularly when it is neither perverse nor contrary to the record but based only on appreciation of evidence. Keeping in view the nature of the work being carried on by the petitioner, the nature of duties which were performed by the respondents-workmen, the continuity of the work for which the labor was employed and the fact that the wages were paid by the petitioner-employer who supervised and controlled not only the attendance but also discipline of the workmen in the discharge of their duties and keeping in view the conditions of contract of the employer with Kashmira Singh, Contractor, there is no other conclusion which can be arrived at except the one that there existing a relationship of employer and workmen between the contesting parties and the Labor Court had rightly passed the award which is impugned in this petition."

17-As noticed above Draconian concept of law is no longer available for the purpose of interpreting a social and beneficial piece of legislation specially on the wake of the new millennium. The democratic polity ought to survive with full vigour: socialist status as enshrined in the Constitution ought to be given its full play and it is in this perspective the question arises – is it permissible in the new millennium to decry the cry of the labor force desirous of absorption after working for more than 240 days in an establishment and having their workings supervised and administered by an agency within the meaning of Article 12 of the Constitution – the answer cannot possibly be in the affirmative – the law courts exist for the society and in the event law courts feel the requirement in accordance with principles of justice, equity and good conscience, the law courts ought rise up to the occasion to meet and redress the expectation of the people. The expression `regulation` cannot possibly be read as contra public interest but in the interest of public.

19-It has to be kept in view that this is not a case in which it is found that there was any genuine contract labor system prevailing with the Board. If it was a genuine contract system, then obviously, it had to be abolished as per Section 10 of the Contract Labor Regulation and Abolition Act after following the procedure laid down therein. However, on the facts of the present case, it was found by the Labor Court and as confirmed by the High Court that the so called contractor Kashmir Singh was a mere name lender and had procured labor for the Board from the open market. He was almost a broker or an agent of the Board for that purpose. The Labor Court also noted that the Management witness Shri A.K. Chaudhary also could not tell whether Shri Kahsmir Singh was a licensed contractor or not. That workmen had made a statement that Shri Kashmir Singh was not a licensed contractor. Under these circumstances, it has to be held that factually there was no genuine contract system prevailing at the relevant time wherein the Board could have acted as only the principal employer and Kashmir Singh as a licensed contractor employing labor on his own account. It is also pertinent to note that nothing was brought on record to indicate that even the Board at the relevant time, was registered as principal employer under the Contract Labor Regulation and Abolition Act. Once the Board was not a principal employer and the so called contractor Kashmir Singh was not a licensed contractor under the Act, the inevitable conclusion that had to be reached was to the effect that the so called contract system was a mere camouflage, smoke and a screen and disguised in almost a transparent veil which could easily be pierced and the real contractual relationship between the Board, on the one hand, and the employees, on the other, could be clearly visualised.`

32. Bharat Bank Limited Vs. Employees of Bharat Bank Limited, AIR 1950 SC 188.

The Hon'ble Supreme Court has held that the Tribunal has got wide power in given circumstances, it can create contract between parties in the interest of justice. No other Courts vested with such power.

33. On the other hand learned Counsel for the Management referred to a judgement of Supreme Court in **case <u>The Director SAIL India vs. IspatKhadandan Mazdoor Union ,(Civil Appeal no- 8081-8082 of 2011)</u> reported in AIR 2019 SC 3601. Para 33,35,39,41,44,46,48,49** have been specifically referred to by learned counsel as follows:-

> Before we may advert to examine the question in the instantappeals any further, it will be apposite to take note of the legaleffect of the prohibition notification issued by the appropriateGovernment in exercise of power under Section 10(1) of CLRA Act and its exposition by the Constitution Bench of this Court in Steel Authority of India Ltd. and Others (supra) overruling the judgment in Air India Statutory Corporation and Others (supra).
>
> The legal consequence of Section 10(1) of the CLRA Act,has been noticed in paragraph 68, 88, 105 an d 125 as follows:
>
> 24"68.We have extracted above Section 10 of the CLRAAct which empowers the appropriate Government toprohibit employment of contract labor in any process, operation or other work in any establishment, laysdown the procedure and specifies the relevant factors which shall be taken into consideration for issuing notification under subsection (1) of Section 10. It is a common ground that the consequence of prohibition notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labor, is neitherspelt out in Section 10 nor indicated anywhere in the Act.
>
> In our view, the following consequences follow onissuing a notification under Section 10(1) of the CL RA Act:
>
> (1) contract labor working in the establishment concerned at the time of issue of notification will cease to function;
>
> (2) the contract of principal employer with thecontractor in regard to the contract labor comes to an end;
>
> (3) no contract labor can be employed by the principal employer in any process,operation or other work in the establishmentto which the notification relates at any time thereafter;
>
> (4) the contract labor is not rendered unemployed as is generally assumed but continues in the employment of the contractor as the notification does not sever the relationship of master and servant between the contractor and the contract labor;
>
> (5) the contractor can utilise the services of the contract labor in any other establishment in respect of which no notification under Section 10(1) has been issued where all the benefits under the CLRA Act which were being enjoyed by it, will be available;
>
> 25 (6) if a contractor intends to retrench his contract labor, he can do so only in conformity with the provisions of the ID Act. The point now under consideration is: whether automatic absorption of contract labor working in anestablishment, is implied in Section 10 of the CLRA Act and follows as a consequence on issuance of the prohibition notification thereunder. We shall revert tot his aspect shortly.88.If we may say so, the eloquence of the CLRA Act in not spelling out the consequence of abolition of contract labor system, discerned in the light of various reports of the Commissions and the Committees and the Statement of Objects and Reasons of the Act, appears to be that Parliament intended to create a bar on engaging contract labor in the establishment covered by the prohibition notification,by a principal employer so as to leave no option withhim except to employ the workers as regular employeesdirectly. Section 10 is intended to work as a permanentsolution to the problem rather than to provide a onetime measure by departmentalizing the existing contract labor who may, by a fortuitous circumstancebe in a given establisment for a very short time as onthe date of the prohibition notification. It could as well be that a contractor and his contract labor who were with an establishment for a number of years were changed just before the issuance of prohibition notification. In such a case there could be no justification to prefer the contract labor engaged on the relevant date over the contract labor employed for a longer period earlier. These may be some of the reasons as to why no specific provision is made for automatic absorption of contract labor in the CLRA Act.105.The principle that a beneficial legislation needs tobe construed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for thatprovided by the legislature. We have already noticed above the intendment of the CLRA Act that it regulates the conditions of service of the contract labor and 26 authorizes in Section 10(1) prohibition of contract labor system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors.But, the presence of some or all

those factors, in our view, provides no ground for absorption of contract labor on issuing notification under sub-section (1) of Section 10. Admittedly, when the concept of automaticabsorption of contract labor as a consequenceof issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of theCLRA Act is explicitly provided in Sections 23 and 25of the CLRA Act, it is not for the High Courts or thisCourt to read in some nspecified remedy in Section10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel, be it absorption of contract labor in the establishment of principal employer or a lesser or a harsher punishment. Such aninterpretation of the provisions of the statute will be farbeyond the principle of ironing out the creases and the scope of interpretative legislation and as such, clearly impermissible. We have already held above, on consideration of various aspects, that it is difficult toaccept that Parliament intended absorption of contract labor on issue of abolition notification under Section 10(1) of the CLRA Act.

125. The upshot of the above discussion is outlined thus: (1)(a) Before 28¬1-1986, the determination of the question whether the Central Government or the State Government is the appropriate Government in relation to an establishment, will depend, in view of the definition of the expression "appropriate Government" as stood in the CLRA Act, on the answer to a further question, is the industry under consideration carried on by or under the authority of the Central Government or does it pertain to any specified controlled industry, or the establishment of any railway, cantonment board, major port , mine or oilfield or the establishment of banking or insurance company? If the answer is in the affirmative, the Central Government will be the appropriate Government; otherwise in relation to any other establishment the Government of the State in which 27 the establishment was situated, would be the appropriate Government;

(b) After the said date in view of the new definition ofthat expression, the answer to the question referred toabove, has to be found in clause (a) of Section 2 of theIndustrial Disputes Act; if (i) the Central Government company/undertaking concerned or any undertakingconcerned is included therein eo nomine, or (ii) any industry is carried on:

(a) by or under the authority of the Central Government, or

(b) by a railway company; or

(c) by a specified controlled industry, then the Central Government will be the appropriate Government; otherwise in relation to any other establishment, the Government of the State in which that other establishment is situated, will be the appropriate Government.

(2)(a) A notification under Section 10(1) of the CLRAAct prohibiting employment of contract labor in anyprocess, operation or other work in any establishmenthas to be issued by the appropriate Government: (1) after consulting with the Central AdvisoryBoard or the State Advisory Board, as the case may be, and

(2) having regard to(i) conditions of work and benefits provided for the contract labor inthe establishment in question, and (ii) other relevant factors including those mentioned in sub-section (2) of Section 10;

(b) Inasmuch as the impugned notification issued bythe Central Government on 9¬12-1976 does not satisfy he aforesaid requirements of Section 10, it is quashed but we do so prospectively i.e. from the date of this judgment and subject to the clarification that on thebasis of this judgment nnoorder passed or no actiontaken giving effect to the said notification on or before28the date of this judgment, shall be called in question inany tribunal or court including a High Court if it has otherwise attained finality and/or it has been implemented.

(3) Neither Section 10 of the CLRA Act nor any otherprovision in the Act, whether expressly or by necessary implication, provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under sub-section (1) of Section 10, prohibiting employment of contract labor, in any process, operation or other work in any establishment. Consequently the principal employer cannot be required to order absorption of the contract labor working in the establishment concerned.

(4) We overrule the judgment of this Court in Air India case [(1997) 9 SCC 377] prospectively and declare thatany direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labor following the judgment in Air India case [(1997) 9 SCC 377] shall hold good and that the same shall not be set aside, altered or modified on

thebasis of this judgment in cases where such a direction has been given effect to and it has become final.

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labor or otherwise, in an industrial dispute brought before it by any contract labor in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contractlabor for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as todeprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labor will have tobe treated as employees of the principal employer who shall be directed to regularise the services of the contract labor in the establishment concerned subject to the conditions as may be specified by it for thatpurpose in the light of para 6 hereunder.

29 (6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labor in any process, operation or other work of any establishment and where in such process, operation or other work ofthe establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labor, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications."

33. The exposition of the judgment of the Constitution Bench ofthis Court made it clear that neither Section 10 nor any otherprovision in the CLRA Act provides for automatic absorption of contract labor on issuing a notification by the appropriate Government under Section 10(1) of CLRAAct. Consequently, the principal employer is not required or is underlegal obligation by operation of law to absorb the contract laborworking in the establishment. 34. This court in Steel Authority of India Ltd. and Others (supra) further held that on a issuance of notification under Section 10(1) of the CLRA Act, prohibiting employment of contract labor in any process, operation or other work, if any

30. industrial dispute is raised by any contract labor in regard to condition of service, it is for the industrial adjudicator to consider whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labor for work of the establishment under a genuine contract, or as a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of statutory benefits. Ifthe contract is found to be sham, nominal or camouflage, then the so called labor will have to be treated as direct employee of the principal employer and the industrial adjudicators should direct the principal employer to regularise their services in the establishment subject to such conditions as it may specify for that purpose in the facts and circumstances of the case.

35. On the other hand, if the contract is found to be genuine and a prohibition notification has been issued under Section 10(1) of the CLRA Act, in respect of the establishment, theprincipal employer intending to employ regular workmen for theprocess, operation or other work of the establishment in regard towhich the prohibition notification has been issued, it shall givepreference to the erstwhile contract labor if otherwise foundsuitable, if necessary by giving relaxation of age as it appears tobe in fulfilment of the mandate of Section 25(H) of the Industrial Disputes Act, 1947.

34. It may be noted that the learned counsel for the respondent has placed reliance on the judgments of this Court in:-

Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another ; Hussainbhai, Calicut Vs. Alath Factory Thezhilali Union, Kozhikode and Others ; Indian Petrochemicals Corporation Ltd. and Another Vs. Shramik Sena and Others and these cases have been considered by the Constitution Bench of this Court in SteelAuthority of India Ltd. and Others(supra) of which a detailed reference has been made by us.

37. Tests which are to be applied to find out whether the person is an employee or an independent contractor in finding out whether the contract labor agreement is sham, nominal or at 1974(3) SCC 4985 1978(4) SCC 257 6 1999(6) SCC 439 32 mere camouflage has been examined by this Court in

International Airport Authority of India Vs. International Air Cargo Workers' Union and Another by the two-judge Bench of this Court. The relevant paras are as under:

"38. The tests that are applied to find out whether a person is an employeeor an independent contractormay not automatically apply in finding out whether thecontract labor agreement is a sham, nominal and is amere camouflage .

For example, if the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer bu that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the` ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted /sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to wok under the principal employer, the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

40. These are the broad tests which have been laid down by this Court in examining the nature and control of the employer and 2009 (13) SCC 374 33 whether the agreement pursuant to which contract labor has been engaged through contractor can be said to be sham, nominal and camouflage.

35. To test it further, apart from the statutory compliance which every principal establishment is under an obligation to comply with, its non-compliance or breach may at best entail in penal consequences which is always for the safety and security of the employee/workmen which has been hired for discharge of the nature of job in a particular establishment. The exposition of law has been further considered in International Airport Authority of India case(supra) where the contract was to supply of labor and necessary labor was supplied by the contractor who worked under the directions, supervision and control of the principal employer, that in itself will not in any manner construe the contract entered between the contractor and contract labor to be sham and bogus per se. Thus, in our considered view, if the scheme of the CLRA Act and other legislative enactments which the principal establishment has to comply with under the mandate of law and taking note of the oral and documentary evidence which came on record, the finding which has been recorded by the CGIT underits award dated 16th September, 2009 in absence of the finding offact recorded being perverse or being of no evidence and even if there are two views which could possibly be arrived at, the view expressed by the Tribunal ordinarily was not open to be interfered with by the High Court under its limited scope of judicial review under Article 226/227 of the Constitution of India and this exposition has been settled by this Court in its various judicial precedents.

36. It is true that judgment in Dena Nath and Others (supra) is in reference to failure of compliance of Section 7 and 12 and not in reference to Section 10(1) of the CLRA Act but if we look into the scheme of CLRA Act which is a complete code in itself, non¬compliance or violation or breach of the provisions of the CLRA Act, it result into penal consequences as has been referred to in Sections 23 to 25 of the Act and there is no provision which would entail any other consequence other than provided under Section 23 to 25 of the Act.

37. Learned counsel for Management has further referred to a decision of Supreme Court in **SLP No. 33798-33799 2014, BHARAT HEAVY ELECTRICALS LTD. Vs MAHENDRA PRASAD JAKHMOLA & ORS.**

The relevant portion of the judgment referred to by learned counsel is being reproduced as follows:-

"We, now come to some of the judgments cited by Shri Sudhir Chandra and Ms. Asha Jain. In `General Manager, (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon v. Bharat Lala and Another' [2011 (1) SCC 635], it was held that the well recognised tests to find out whether contract laborers are direct employees are as follows:

"10. It is now well settled that if the industrial adjudicator finds that the contract between the principal employer and the contractor to be a sham, nominal or merely a camouflage to deny employment C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) benefits to the employee and that there was in fact a direct employment, it can grant relief to the employee by holding that the workmen is the direct employee of the principal employer. Two of the well-recognized tests to find out whether the contract laborers are the direct employees of the principal employer are: (i) whether the principal employer pays the salary instead of the contractor;

and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that the first respondent is a direct employee of the appellant" The expression 'control and supervision' were further explained with reference to an earlier judgment of this Court as follows:

"12. The expression "control and supervision" in the context of contract labor was explained by this Court in International Airport Authority of India v. International Air Cargo Workers' Union thus: (SCC p.388, paras 38-39) "38.... if the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by a contractor, if the right to regulate the employment is with the contractor, and the ultimate supervision and control lies with the contractor.

39. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him.

But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer, the worker works under the supervision and control of the principal employer C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) but that is secondary control. The primary control is with the contractor." From this judgment, it is clear that test No. 1 is not met on the facts of this case as the contractor pays the workmen their wages. Secondly, the principal employer cannot be said to control and supervise the work of the employee merely because he directs the workmen of the contractor 'what to do' after the contractor assigns/ allots the employee to the principal employer. This is precisely what paragraph 12 explains as being supervision and control of the principal employer that is secondary in nature, as such control is exercised only after such workmen has been assigned to the principal employer to do a particular work.

We may hasten to add that this view of the law has been reiterated in 'Balwant Rai Saluja and Another v. Air India Limited and Others' [2014(9) SCC 407], as follows:

"65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

(i) who appoints the workers;

(ii) who pays the salary/remuneration;

(iii) who has the authority to dismiss;

(iv) who can take disciplinary action;

(v) whether there is continuity of service; and

(vi) extent of control and supervision i.e. whether there exists complete control and supervision.

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [(2011) 1 SCC 635], International Airport Authority of India case [2009 13 SCC 374] and Nalco case [(2014) 6 SCC 756]." C.A. NOS. 1799-1800/ 2019 etc. (@SLP (C) Nos. 33747-33748/ 2014 etc.) However, Ms. Jain has pointed out that contractors were frequently changed, as a result of which, it can be inferred that the workmen are direct employees of BHEL."

38. Another case **Bengal Nagpur Cotton Mills 2011 Vol.1 SCC 635 (para-10, 14, 16, 8 and 12)** referred to by learned counsel is also the relevant paragraphs of which are being reproduced as follows:-

"The expression 'control and supervision' in the context of contract labor was explained by this court in International Airport Authority of India v. International Air Cargo Workers Union [2009 (13) SCC 374] thus: "If the contract is for supply of labor, necessarily, the labor supplied by the contractor will work under the directions, supervision and control of the principal employer but that would not make the worker a direct employee of the principal employer, if the salary is paid by contractor, if the right to regulate employment is with the contractor, and the ultimate supervision and control lies with the contractor. The principal employer only controls and directs the work to be done by a contract labor, when such labor is assigned/allotted/sent to him. But it is the contractor as employer, who chooses whether the worker is to be assigned/allotted to the principal employer or used otherwise. In short, worker being the employee of the contractor, the ultimate supervision and control lies with the contractor as he decides where the employee will work and how long he will work and subject to what conditions. Only when the contractor assigns/sends the worker to work under the principal employer,

the worker works under the supervision and control of the principal employer but that is secondary control. The primary control is with the contractor."

39. The case of **Himmat Singh vs ICI India (2008) 3 SCC P**referred to by learned counsel for Management the referred paragraphs of the judgment are being reproduced as follows:-

"A few observations made by the High Court which are relevant need to be noted. It was held by the High Court as follows: "The labor court has held that the petitioners were not working as helpers to the fitters; they were not paid by the company; and were engaged on contract for intermittent work i.e. they did not have regular or permanent work. The work that the petitioners do may be similar to the work of the workmen of the company, but they are not doing the work that is ordinary part of the industry. This is for reason that they- ? did not have permanent work; ? were engaged in intermittent work and ? themselves claimed to be workmen of the contractor Rehman in proceedings under Rule 25 of the Labor Contract Act and got benefit under the same." 9. Similarly, the Labor Court noted that contractor Rehman had applied to the administration for license under the State Contract Labor Act and considering the nature of the contract license has been granted to him. 10. In Steel Authority of India Ltd. v. Union of India &Ors. [2006(12) SC 233] it was inter-alia held as follows: "The workmen whether before the Labor Court or in writ proceedings were represented by the same union. A trade union registered under the Trade Unions Act is entitled to espouse the cause of the workmen. A definite stand was taken by the employees that they had been working under the contractors. It would, thus, in our opinion, not lie in their mouth to take a contradictory and inconsistent plea that they were also the workmen of the principal employer. To raise such a mutually destructive plea is impermissible in law. Such mutually destructive plea, in our opinion, should not be http://JUDIS.NIC.IN SUPREME COURT OF INDIA Page 3 of 3 allowed to be raised even in an industrial adjudication. Common law principles of estoppel, waiver and acquiescence are applicable in an industrial adjudication." 11. In view of the factual position highlighted above and the ratio of the decision in Steel Authority's case (supra), the inevitable result is that the appeal is sans merit, deserves dismissal, which we direct with no order as to costs.

40. Airport **Authority of India vs. Indian Airport Kamgar 2011 Vol.1 L.L.J page-II Bombay para 32,33,37** referred to by learned counsel for the Management. Wherein, award allowing reference regarding same character of engagement of contract labor was held now allowed in light of facts peculiar to the case referred.

Another case **of Post Master General vs. Tutudas(2007)5 SCC 317.**

Wherein, it has been held that **illegal/improper grant of regularization to similarly situated persons does not create and entitlement to regularization on the ground of equal treatment under article 14 of constitution as equality is a positive concept and can not be invoked where any illegality has been committed or where no legal right has been established.**

In another case **Dhampur Sugar Mills Vs Bhola Singh AIR 2005 SC page no 1790,** referred to by learned counsel for management it has been laid down that:

completion of 240 days in continuous service may not itself be ground for regularization of service particularly in case when workmen had not been appointed in accordance with rules.

41. The case of **Haldiya Employees Union Vs. Indian Oil Corporation 2005 CAB IC page 2078 SC** also referred to by learned counsel of which relevant paragraphs 15,16,17 & 20 specifically referred by the learned counsel are being reproduced as follows:-

"No doubt, the respondent management does exercise effective control over the contractor on certain matters in regard to the running of the canteen but such control is being exercised to ensure that the canteen is run in an efficient manner and to provide wholesome and healthy food to the workmen of the establishment. This however does not mean that the employees working in the canteen have become the employees of the management. A free hand has been given to the contractor with regard to the engagement of the employees working in the canteen. There is no clause in the agreement stipulating that the canteen contractor unlike in the case of Indian Petrochemicals Corporation Ltd. & Another (supra) shall retain and engage compulsorily the employees who were already working in the canteen under the previous contractor. There is no stipulation of the contract that the employees working in the canteen at the time of the commencement of the contract must be retained by the contractor. The management unlike in Indian Petrochemicals Corporation Ltd. case (supra) is not reimbursing the wages of the workmen engaged in the canteen. Rather the contractor has been made liable to pay provident fund contribution, leave salary, medical benefits to his employees and to observe statutory working hours. The contractor has also been made responsible for the proper maintenance of registers, records and accounts so far as compliance of any statutory provisions/obligations are concerned. A

duty has been cast on the contractor to keep proper records pertaining to payment of wages etc. and also for depositing the provident fund contributions with authorities concerned. Contractor has been made liable to defend, indemnify and hold harmless the employer from any liability or penalty which may be imposed by the Central, State or local authorities by reason of any violation by the contractor of such laws, regulations and also from all claims, suits or proceedings that may be brought against the management arising under or incidental to or by reason of the work provided/assigned under the contract brought by employees of the contractor, third party or by Central or State Government Authorities. The management has kept with it the right to test, interview or otherwise assess or determine the quality of the employees/workers with regard to their level of skills, knowledge, proficiency, capability etc. so as to ensure that the employees/workers are competent and qualified and suitable for efficient performance of the work covered under the contract. This control has been kept by the management to keep a check over the quality of service provided to its employees. It has nothing to do with either the appointment or taking disciplinary action or dismissal or removal from service of the workmen working in the canteen. Only because the management exercises such control does not mean that the employees working in the canteen are the employee of the management. Such supervisory control is being exercised by the management to ensure that the workers employed are well qualified and capable of rendering the proper service to the employees of the management."

42. Following settled propositions of law emerges:-

A. The point whether the contract is sham, bogus and camouflage will arise only when the work contract which was allotted to the contractor was of non-prohibited category and also in cases where though the work contract which was allotted to the contractor was of non-prohibited category it become in prohibited category later on under the notification issued by appropriate Government under Section 10(1) of CLRA Act.

B. In reaching at a point whether the work contract was sham bogus and camouflage, the relevant facts for consideration will be as to firstly,who was to exercise the effective supervision and control,secondly,at whose site, the workmen were engaged, thirdly, who paid the wages and fourthly, who provided instruments and training and other facts like this is settled in the aforesaid judgments. It is also settled that what is the effective control and supervision from industry to industry and control and supervision is not only criteria for reaching at the conclusion whether the work contract was sham, bogus or camouflage also what effective control and supervision is shall differ from industry to industry fact wise.

43. Now coming into the facts and evidence in the present case in the light of settled provisions as mentioned in the case laws referred to from both the sides. The case of workmen union on this point is that in fact the workmen were engaged by the Management and wanted to deprive them of their legally admissible due to management set up camouflage contractor and has given the color of work done under the contractor by a contract labor. According to the workmen/union, the management engaged a contractor for payment of less wage as a smoke screen and a camouflage in the eyes of law. The process of which was to deny the rights and other rights to the workmen. The workmen were doing their duties under the strict provisions of management of SECL, they were given vocational training and issued certificate for the job. Tools for the job were also supplied by the management. They worked under the supervision and control of the Management, coupled with the fact that they were engaged in the work of perennial nature in violation of NCWA as well as in violation of CLRA Act because of their work being of prohibited nature also clearly shows that the contract and the contractor as well as theory of contract set up by management is simply a false and fake. It is sham and camouflage to deny the workmen of their legally admissible dues which is proved from record whereas the learned counsel for management has submitted that the overall control and supervision was that of the contractor. The management was only concerned with the work and had limited control and supervision over the workmen. Also, it has been submitted that instrument and vocational training was provided in the light of rules provided in this respect. Payment of wages were made by the contractor under supervision of management as the rules provided for this, hence the fact that the agreement was a sham and a camouflage cannot be held proved, as submitted by learned counsel for management.

44. From the evidence in the form of witness and documents, the management does not deny that the work of the workmen was supervised by management. According to management, it was a limited supervision and control and management also does not deny that work was given to the management by the workmen and also that the instruments ie; light lamp and other instruments were supplied by the management. Management also does not deny that payment of wages was made under their supervision but has put a caveat that payment was made by the contractor under the supervision of management as it was provided in the work agreement & rules.

45. Learned counsel for the workmen further submits that this Tribunal is obligated to lift the veil and see the facts taking into account the total circumstances of the case in coming to the conclusion whether the contract is sham, bogus and nongenuine. He further submits that may be apparently the work contract may appear legal

but this Tribunal will have to lift the veil in this case to do full justice between the parties . Learned counsel has referred to para-18 and 21 of the case "**General Manager, Oil and Natural Gas Commission, Silchar Vs. Oil and Natural Gas Commission Contractual workers union, (2008)12 Supreme Court Cases 275**".

1. The relevant portion of the judgement is quoted below: -

"Para-18: ..... We, however, believe that this present case is not one of regularization simpliciter such as in the case of an ad hoc or casual employee claiming this privilege. The basic issue in the present case is the status of the workmen and whether they were the employees of ONGC or the contractor and in the event that they were the employees of the former, a claim to be treated on a par with other such employees. As would be clear from the discussion a little later, this was the basic issue on which the parties went to trial, notwithstanding the confusion created by the ill-worded reference.

Para-21: Even ONGC had admitted that since 1988, there was no licensed contractor and that wages were being paid through one of the leaders of Union, and one person who was named as contractor, was in fact himself a workmen whose name appeared in acquaintance roll. Real issue therefore was regarding status of workmen as employees of ONGC or of contractor, and it having found that workmen were employees of ONGC, they would ipso facto be entitled to benefits available in that capacity.Issue of regularization would therefore pale in insignificance. The Industrial Tribunal and Division Bench of the High Court were justified in lifting the veil in order to determine nature of employment."

46. Learned Counsel for Management has referred to Judgment of Supreme **Court Oshiar Prasad &Ors. Vs. Employees in relation to management Sudam-D coal washery of BCCI Dhanbad-2015-ILLJ-513SCpara-25 which is as follows-**

It is thus clear that the appropriate Government is empowered to make a reference under Section 10 of the Act only when "Industrial dispute exists" or "is apprehended between the parties". Similarly, it is also clear that the Tribunal while answering the reference has to confine its inquiry to the question(s) referred and has no jurisdiction to travel beyond the question(s) or/and the terms of the reference while answering the reference. A fortiori, no inquiry can be made on those questions, which are not specifically referred to the Tribunal while answering the reference.

47. The reference has been mentioned in this Judgment earlier which is regarding the action of the non-regularisation of the workmen, whether it is legal or justified and if it is not then what relief the workmen are entitled. Hence, **the fact in issue** is whether non-regularization of the workmen who performed various duties in Harad Incline Colliery since 7-10-1994 upto 1-4-1997 is legal and justified or not and **the relevant facts to decide the fact in issue** will get settled in the light of the pleadings of the parties in respect of their rival claims. Hence, there is no question of travelling beyond reference in this case but **while in the process of reaching at the conclusion with regard to the fact in issue, whether the so called agreements were sham or genuine or it is camouflage to deny the workmen of their benefits under law is a relevant fact and to record finding in this respect naturally the veil has to be lifted.**

48. It is further submitted by learned counsel for workmen union that the burden of proof lies on management to prove that the concerned workers are contract labor and also the contract is genuine. Union placed reliance on the judgment reported in the case of ***"Caparo Engineering India Limited Vs. Pradhanmantri Engineering ShramikSanghthan, 2019 (1)MPLJ 147***." The relevant portion is reproduced below: -

"(b) Evidence Act, S.102 – Burden of proof – Petitioner-company's case that employees are contract labor – therefore, Labor Court has rightly shifted burden on them to establish this – No error committed by Labor Court while directing petitioner to lead evidence and prove that respondents are contract laborers (para-31)"

49. The learned counsel for union alternatively submits that even in the circumstances, the union has not been able to prove that they were working in prohibited category of work notified by the Government of India, even then from the pleadings of the union, the employer-employee relationship between the management and the workmen is clearly established.

50. In all the case laws referred to by the learned counsel for the parties, one thing is common is that the work contracts were in non prohibited category when they were allotted to the Contractors. They came under prohibited category only later on whereas in the case in hand on the basis of evidence on record it has been established that the so called work contract between the employer and contractor was prohibited by law being violative of NCWA and notification under Section 10(1) of the CLRA Act prohibiting work of that type being taken by contractors long before the contractor was engaged to execute the work done by the principal employer. Hence the referred cases can be easily distinguished from the case in hand on this point as mentioned earlier. It is not disputed between the parties that vocational training was given by the Management to the workers, tools were provided by the Management to the workers. Management exercised control and

supervision on day to day working of the workmen and wages were paid in person by the Management and its representatives. According to the Management counsel all this was done as it was so provided in the work contract.

51. Reference of Section 2(d) of Indian Contract Act requires to be taken here which define all the contract as it is so because CLRA Act does not define contract. Section 2(d) reads as under:-

"Contract is an agreement enforceable by law."

52. According to **Section 23 of Indian Contracts Act** which deals with the as what consideration and object are lawful and what not is being reproduced as follows:-

"what considerations and objects are lawful and what not-....

The consideration or object of an agreement is lawful unless-

It is forbidden by law, or

Is of such nature that,if permitted, it would defeat the provision of any law or is....."

Similary Section 24 of the said Act is also being reproduced as follows:-

"**If any part of a single consideration for one or more objects, or any or any part of several considerations for a single object, is unlawful, the agreement is void."**

53. In the light of the above noted provisions of Indian Contract Act since even the first work agreement between the parties was against prohibitions of law as it defeats the provisions of NCWA and Section 10(1) of the CLRA Act at the very time it was entered into by the parties because these prohibitions were enforced before the agreement was entered into by the parties will be *void ab intio* In law meaning thereby there is no contract at all as per law between the parties. Same will be the fate of other two so called work contracts entered into by the parties after the first work agreement . Thus it is not legally permissible on the part of Management to contend that all the work of supervision, training and other actions detailed earlier were in the light of terms of the work agreement because the said work agreement ar*e void ab initio*, as discussed above right from the date of the agreements. The natural inference/consequences of this will be that it will be deemed that in fact the control of supervision of workers by Management, training of worker's management, providing tools and instruments by Management etc. where done by the Magistrate on their own. It cannot be taken to be done if the work contract is *void ab initio*, admitted is the fact between the parties is that the said workmen worked on the sight which was owned by the Management i.e. is to say that the work place was the premises of Management i.e. principal employer.

54. Hence following facts are held proved in the light of above discussion which is as follows:-

(1) The work agreement was violative of legal provisions and prohibitions from the date the parties entered into the agreement.

(2) Since the object of the work agreement was to defeat the provisions of law i.e. to say not lawful hence the work agreements is *void ab intio* from their date of inception.

(3) As the work agreement is *void ab initio* , hence cannot be held that Management control and supervision and other actions as discussed above,was done by Management in the light of the terms of the work agreement.

55. Accordingly, in the light of above provisions, this Tribunal is constrained **to hold that the work agreement between the principal employer and allotted to contractor was sham, bogus and camouflage,an unfair labor practice defeating the provisions of law, the sole aim of which was to deprive the workmen of their legally admissible claims, stands proved**.

Issue No.2 is answered accordingly.

56. **ISSUE NO. 3:-**

In the light of the findings recorded earlier at Issue No.1 & 2 the workmen who were engaged via the sham and bogus agreement as a camouflage shall be deemed to be under employment of the principal employer which is SECL and are held so.

57. Since the Management has disputed the number and identity of the workmen annexed as a list to the reference , hence the first question arises is how many and who of the list have been proved to be engaged and secondly whether their disengagement is justified in law and fact or not.

58. According to the Management, since the details of the claimant /workmen was not mentioned in the list which was annexure to the reference, the Management filed an application on 26-10-1998 requiring the workman to disclose the particulars of claimants. The Union agreed to comply it and furnished particulars as

requested vide order dated 14-1-1999, but submitted incomplete particulars of 111 workmen, disclosing their names, their fathers name, present and permanent address, still the rest of the particulars with regard to their alleged engagement i.e. date of birth, place of work, nature of work, order of termination etc. were not supplied and their photographs were not attested by the Competent Authority, hence the claim of all these 111 persons cannot be taken into account and liable to be rejected.

59. The case of the workmen/union on this point, as stated in their rejoinder, is that it was specifically pleaded that these workmen were engaged between the period 7-10-1994 up to 1-4-1997. The place of work and the nature of work was already mentioned in the claim which was Sheetal Dhara Project and the nature of work was as mentioned in the wage agreement between the contractor and the Management. Also, it was alleged that since the dis-engagement was not by a written order, such an order could not be produced. Further it was alleged that under law the Management is under obligation to maintain attendance register and Form-B registers, as well as other relevant registers with respect to these workmen which have been withheld by the contractor and the Management and the workmen are not in a position to collect these registers because these registers are in their custody.

60. The Contractor witness Shri Suresh Dave has stated in its statement of oath that he obtained a license from concerned authority under Section 12 of Contract labour Regulation and Abolition Act on 20-10-1994 which was licence No.135/94 which was for 100 workmen. Further a licence was obtained on 24-4-1997 to engage contract labour for this work, after the expiry of the first license. The contractor does not state as to the second license was for how many workmen but it states that all the documents in this respect were submitted before the Deputy CLC when the complaint regarding non-payment of proper wages was raised by the Union.

61. The Management witness Shri S.K. Shrivastava has only on this point that the particulars of the claimants are incomplete. There are serious allegations regarding their identity and number. This is not a specific identity. He admits that vocational training was given to the workman. Management could well produce the list of the workmen who were given vocational training for this work to substantiate its claim that in fact 113 workmen were not engaged for the work. The other Management witness also states and admits the same. Hence from the evidence on record an inference against the management can be drawn that by non-production of documents regarding vocational training and issuing of instruments etc. the management has concealed vital information in this respect. Accordingly, in the facts and circumstances mentioned above and on the basis of evidence mentioned above, it is held proved that atleast 111 workmen whose particulars were given by workmen/Union were engaged in the said project for the work details mentioned above.

62. Reference of Section 2(oo) of Industrial Disputes Act, Section 25(b)(2), Section 25(f) and Section 25(N) of Industrial Dispute Act,1947 are being reproduced as follows:-

> 2[(oo) "retrenchment" means the termination by the employer of the service of a workmen for any any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include— (a) voluntary retirement of the workmen; or (b) retirement of the workmen on reaching the age of superannuation if the contract of employment between the employer and the workmen concerned contains a stipulation in that behalf;
>
> Section 25.B.(Definition of continuous service):-
>
> Where a workmen is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
>
> (a) For a period of one year, if the workmen, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
>
> (i) one hundred and ninety days in the case of a workmen employed below ground in a mine; and
>
> (ii) two hundred and forty days, in any other case;
>
> (b) For a period of six months, if the workmen, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
>
> (i) ninety-five days , in the cae of wrkman employed below ground in a mine and
>
> (ii) one hundred and twenty days, in any other case.

Explanation-For that purposes of clause(2), the number of days on which a workmen has actually worked under an employer shall include the days on which-

(i) he has been laid off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders)Act,1946(20 of 1946), or under the Act or under any other law applicable to the Industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) In the case of a female, she has been on maternity leave; soi however, that the total period of such maternity leave does not exceed twelve weeks.

25F. Conditions precedent to retrenchment of workmen.—No workmen employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until— (a) the workmen has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; (b) the workmen has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [for every completed year of continuous service] or any part thereof in excess of six months; and (c) notice in the prescribed manner is served on the appropriate Government 3 [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

2 [25N. Conditions precedent to retrenchment of workmen.—(1) No workmen employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,— (a) the workmen has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workmen has been paid in lieu of such notice, wages for the period of the notice; and (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf. (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner. (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen. (4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days. (5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year from the date of such order. 1. Sub-section (6) re-numbered as sub-section (10) by Act 49 of 1984, s. 4 (w.e.f. 18-8-1984). 2. Subs. by s. 5, ibid., for section 25N (w.e.f. 18-8-1984). 33 (6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workmen, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference. (7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workmen and the workmen shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him. (8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct, that the provisions of sub- section (1) shall not apply in relation to such establishment for such period as may be specified in the order. (9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workmen who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation

which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

63. Now further point arises whether it is proved from the evidence on record that the aforesaid 111workmen worked for a period of 190 days as mentioned under Section 25 and Section 21(a) of the Industrial Disputes Act,1947 which applies to mines and is applicable in the case in hand or not ?

64. The workmen witnesses have stated that they worked continuously and documents produced by Management regarding contract and execution of work also states that they worked continuously for two years preceding date of their disengagement. There is nothing on record to indicate otherwise, hence as regard to 111 workers as mentioned in Exhibit M-9 referred above, their case that they worked for a period of 190/240 days in the year preceding their disengagement is held proved.

65. Since it is not the case of the Management that any notice or compensation was given to the workmen, their disengagement is held against law and fact.

Issue No.3 is answered accordingly.

66. ISSUE NO. 4:-

In the light of the findings recorded while discussing the Issue No.1,2 and 3, now the question arises as to what relief the 111 workers who have been held to be in employment of Management of SECL and their disengagement is legally unjustified

67. According to the learned Counsel for Management, their reinstatement and regularization will not be justifiable keeping in view the facts that firstly the litigants has continued for about 23 years, hence most of the workmen would have crossed the age of superannuation and secondly they cannot be regularized as they were not in service, when the reference was made to the dispute. Learned Counsel for Management has again placed reliance on case of **Oshiyar Prasad (Supra)**. In the said case of Oshiyar Prasad, the workmen were held entitled to retrenchment compensation.

68. The settled proposition of law is that when the disengagement of the workmen is found violative of Section 25(G) of Industrial Dispute Act,1947 or when it is found that a workman has been retrenched against law , he has to be either reinstated with or without back wages or be given compensation in lump sum as his claim. In the case in hand also the disengagement/retrenchment of the 111 workmen has been held legally unjustified, hence these 111 workmen have the right to be reinstated with or without back wages and service benefits life absorption/regularization etc. or lump sum compensation in lieu of their rights to be paid to them . In the case in hand the dispute first started in 1998 and has taken around 23 years to be decided. Since now many workmen have crossed the age of superannuation, financial condition as well as availability of the work with the employer company is also to be looked into . Hence keeping in view the facts of the case in hand, the ends of justice will be served if a lump sum compensation in lieu of wages after re-instatement, right to regularization and other consequential service benefits be granted to them. In the light of the facts and circumstances of the case in hand , lump sum compensation of **Rs. 2lacs (Rs.2,00,000/-)** to each of the 111 workman will meet the ends of justice. Keeping in view the period litigation and its chequered history workmen/union also deserves to be paid the cost of litigation.

Issue No.4 is answered accordingly.

69. On the basis of the above discussion following award is passed.

Accordingly the award is passed as follows:-

A. The action of Management of SECL in disengaging the 111 workmen and not regulalrising them is held unjustified in law and fact.

B. The aforesaid 111 workers are held entitled to get Rs.2 lac (Rs. 2,00,000/- each)per person as lump sum compensation in adjustment of their rights.

C. The cost of the litigation Rs.50,000/-(Fifty thousand only) will also be paid by Management of SECL to the workmen/Union.

70. Let the copies of the award be sent to the Government of India, Ministry of Labor & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

नई दिल्ली, 12 अगस्त, 2021

का आ. 578.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंधतंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1, मुंबई के पंचाट (संदर्भ संख्या 05/2018) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.08.2021 प्राप्त हुआ था।

[एल-41011/11/2017-आईआर (बी-1)]

डी. गुहा, अवर सचिव

New Delhi, the 12th August, 2021

S.O. 578.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2018) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Mumbai as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 12.08.2021.

[No. L-41011/11/2017-IR (B-1)]

D. GUHA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1 MUMBAI

Present : JUSTICE RAVINDRA NATH KAKKAR, Presiding Officer

REFERENCE NO. CGIT-1/5 OF 2018

Parties: Employers in relation to the management of Western Railway

AND

Their workman

Appearances:

For the Management : Mr. Jyoti Panwalkar, Adv.

For the Union : Mr. Davis E.T., Gen. Secretary

State : Maharashtra

Mumbai, dated the 22nd day of March 2021

AWARD

1. The present reference has been made by the Central Government by its order dated 15.01.2018 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Dispute Act, 1947. The terms of reference as per the schedule to the said order are as under:

> "Whether the action of Railway Admin. i.e. DRM, BCT, in proposing transfer of Sh. Barun K. Bose, CLI, treating the post as ex-cadre, is fair, justified and legal? If not, what relief the workman is entitled to?"

2. The case is taken up today. Ms. Jyoti Panvalkar, learned counsel for the first party/Management is present. Mr. Davis E.T. General Secretary of the Union , for the second party Union is present. Perusal of the record reveals that despite several adjournments of the case from the year 2018, no statement of claim has been filed by the second party Union.

3. The workman Mr. Barun K. Bose has filed an application on 07.12.2018 in this Tribunal stating that he desires to withdraw the present dispute. The said letter has been endorsed by Mr.Davis E.T. General Secretary of the Union. Mr. B Mahapatra, Dy.Chief Personnel Officer (HQ) Western Railway HQ Office has filed his `Say` that the workman had submitted one letter in the Office of this Tribunal stating that he wants to withdraw his case as the present dispute has been solved amicably.

4. In view of the application made by the workman and also in view of the `Say` filed by Mr. B. Mahapatra, Dy.Chief Personnel Officer Western Railway HQ Office, this reference does not survive and is disposed of accordingly.

5. Award is made accordingly.

Justice RAVINDRA NATH KAKKAR, Presiding Officer

नई दिल्ली, 13 अगस्त, 2021

का. आ. 579.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स यूनिट हेड, फेरो स्क्रैप निगम लिमिटेड, भिलाई यूनिट भिलाई दुर्ग (छत्तीसगढ़) के प्रबंधतंत्र के संबद्ध नियोजकों और श्री संजय बंगाडे, कार्यकर्ता के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, जबलपुर पंचाट (संदर्भ संख्या 45/2016) को प्रकाशित करती है जो केन्द्रीय सरकार को 13.08.2021 को प्राप्त हुआ था।

[सं. एल-26012/3/2016-आईआर(एम)]

डी. गुहा, अवर सचिव

New Delhi, the 13th August, 2021

S.O. 579.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 45/2016) of the Central Government Industrial Tribunal/Labour Court, Jabalpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s The Unit Head, Ferro Scrap Nigam Ltd., Bhilai Unit Bhilai Durg (Chhattisgarh) and Shri Sanjay Bangade, Worker which was received by the Central Government on 13.08.2021.

[No. L-26012/3/2016-IR (M)]

D. GUHA,Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/45/2016

Present: P. K. Srivastava, H.J.S..(Retd)

Shri Sanjay Bangade & 10 Others
Helper-cum-Greaser (Trainee),
Ferro Scrap Nigam Ltd.,
Bhilai, District Durg ... Workman

Versus

The Unit Head,
Ferro Scrap Nigam Ltd., Bhilai Unit,
Inside Bhilari Steel Plant,
Mockdump Area, P.B. No.54,
Bhilai Steel Plant, Bhilai Durg (CG-490001) ... Management

AWARD

(Passed on this 16th day of July 2021)

As per letter dated 12/4/2016 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-26012/3/2016-IR(M).The dispute under reference relates to:

"1-Whether the action of the management Ferro Scrap Nigam Ltd.Bhilai in not giving the status of permanency to 11 workmen, namely, Sarvshri Sanjay Bagade, Puna Ram Sahu, Ravi Nayak, Ishwar Lal, Umesh, Jaideep Kumar, Dinesh Kumar Dewangan, Arjun Singh Sahu, Madhusudan Sahu, Jitendra Kumar & Ram Singh and regularizing their services is legal and justified? If not, what relief the workmen are entitled to ?

2-Ferro Scrap Nigam Ltd., a Central Public Sector undertaking Company, the Government of Indian is appropriate Government." ."

1. After registering the case on the basis of reference, notices were sent to the parties. The parties have filed their respective statement of claim/defense.

2. The case of the workmen as stated in their statement of claim is that they were offered temporary appointment on the basis of Helper/Greser for an initial period of one year from the date of joining with the management Company. Their selections were made on the basis of interview/trade test conducted by the Management. The different dates of appointment letter are as follows:-

Name of employee	Designation	Date of appointment
Sanjay Bagade	Helper-cum-Greaser	14-8-2012
Eshwar Lal Sahu	Helper-cum-Greaser	27-7-2012
Umesh	Helper-cum-Greaser	27-7-2012
Puna Ram Sahu	Helper-cum-Greaser	27-7-2012
Ravi Nayak	Helper-cum-Greaser	27-7-2012
Jaydeep Kumar	Helper-cum-Greaser	14-8-2012
Dinesh Kumar Dewangan	Helper-cum-Greaser	27-7-2012
Arjun Singh Sahu	Helper-cum-Greaser	27-7-2012
Madhusudan Sahu	Helper-cum-Greaser	27-7-2012
Jitendra Kumar	Helper-cum-Greaser	27-7-2012
Ramsingh	Helper-cum-Greaser	27-7-2012

3. It is there case that they were appointed temporarily for a period of one year which could be extended for another period of 2 years, subject to vacancy requirement prevailing at that time and job performance. Their period of appointment was extended for 2 years and they were allowed to continue with the service of company for further extended period of 2 years, after completion of initial period of one year. Thereafter instead of regularizing these workmen the Management adopted the practice of extension of their services for 03 months from time to time and kept this extension in continuation till 2016. According to the workmen, this was an unfair labour practice adopted by the Management with a view to deprive all these workmen of their legally admissible claims and dues regarding their absorption and regularization with the company inspite of the fact that job and vacancy existed for which their appointment was extended from time to time. It is the case of the workmen that they are still in employment of the management but have been deprived of benefits of regularization and absorption in the cadre. Accordingly they claimed that the reference be answered in favour of the workman, holding the action of the management in not giving the status of permanency and not regularizing their services , is against law and not justified in law.

4. According to the statement of defense filed by Management, it is admitted that after adopting recruitment procedure, these workmen were temporarily appointed for the post of Helper for initial period of one year from the date of joining in the year July-August 2012 and their services were extended for 02 years after they completed one year in service as per their condition stated in their appointment letter. According to the Management, their appointment letter are covered by certified standing orders, which contain provision for confirmation of permanent status to the workmen who completes twelve months of continuous service within the meaning of Industrial Disputes Act,1947, in one or more posts, in connection with temporarily increase in permanent work. According to the Management, as per their offer of appointment, the engagement was of purely temporary in nature, for a period of one year and upon exigency and utilization of their services, could be extended for another 02 years. It was also mentioned in the offer of appointment that in the event of long term requirement and availability of permanent vacancy, their case could be considered for permanent employment, as per rules subject to their satisfactory work performance , during their temporary employment. Also it has been pleaded that it was specifically stated in the offer of appointment that at no point of time, these appointees could claim permanent absorption , hence according to the management, their claim for regularization and permanent absorption is not sustainable in law. It is further the case of Management that the work is of temporary nature, taking these workmen in permanent capacity would cause severe financial implication and Management is not in a position to absorb these workmen on permanent post due to unpredictable job availability with the Management. Accordingly it has been prayed , that the reference be answered against the workmen.

5. The workmen have mainly filed their initial officer of appointment and letters of extension of service issued by the Management from time to time . All these documents have been admitted by Management and have been marked as Exhibits W-1 to W-29.

6. The workman side has examined on oath the workman Sanjay Bagade who has been cross-examined by Management. The Management has also examined its witness Sourabh Radheshyam Tharewal, Manager Law, who has been cross-examined by workman. The Management has not filed any documents. Arguments of Shri Praveen Yadav, learned counsel for the workmen and Shri Praveen Namdev, learned counsel for the Management has been heard through video conferencing. I have perused the record and memorandum of arguments filed by workman side.

7. The reference is the point for determination, in the case in hand.

8. The main submission from the side of the workmen is that the workmen were first appointed for one year. This period was extended for another two years and since then their appointment is being extended for short period, continuously till date. This is an unfair labour practice defined in Industrial Disputes Act, 1947, just to deprive the workmen from their legally admissible claim of regularization and absorption on permanent basis which has to be undone by this Tribunal.

9. On the other hand, learned counsel for the Management has submitted that there is no permanent vacancy against which these workmen can be regularized. More over as per the terms and conditions mentioned in the offer of appointment, accepted by the workmen, they cannot claim regularization as a matter of right which they have agreed.

10. It is not disputed that these workmen have entered into service through proper channel after clearing the required test/interview according to the recruitment Rules. The work conditions and recruitment of workmen are guided by work standing orders. These orders have provision for temporary employee in Rule 3(b) of the Industrial Employment(Standing orders), which is as follows:-

3(b)-TEMPORARY EMPLOYEE

Temporary Employees means employees who are employer for work which is essentially of a temporary nature or who are employed in connection with a temporary increase in permanent work for a period not exceeding 12 months, provided that in case a temporary employee is placed on probation, the period of his temporary service shall count towards the probationary period.

11. Probationer has also been defined in Rule 3(e) of the Industrial Employment(Standing orders) which is as follows:-

3(e)-PROBATIONER:

Probationers means persons who are provisionally employed to fill vacancies in permanent posts for a period not exceeding 6(six) months and who have not completed their probation period provided that the period of probation may be extended by the Management beyond the original period by not more than 6(six) months for reasons to be recorded in writing.

12. Rule 30(i) and (ii) deals with discharge of termination of service, which is as follows:-

DISCHARGE OR TERMINATION OF SERVICE:

30(i):- In case of permanent employee by giving one month's notice in writing or on payment of one month's basic pay and D.A. in lieu thereof from either side, unless the terms of appointment stipulate for a longer period of notice which shall be followed.

30(ii):- No notice or pay in lieu of notice shall be necessary in the case of casual workmen. The employment of a temporary workman shall be subject to termination on such notice, in writing from either side as may be provided in the letter of appointment.

13. Schedule 5 Read with Section read with Section 2(ra)of Industrial Disputes Act,1947 defines unfair labour practice. Section 6 and Section 10 of Schedule are being reproduced as follows:-

(5) To discharge or dismiss workmen-

(a) by way of victimization;

(b) not in good faith, but in the colorable exercise of the employer's rights;

(c) by falsely implicating a workman in a criminal case on false evidence or on concocted evidence;

(d) for patently false reasons;

(e) on untrue or trumped up allegations of absence without leave;

(f) in utter disregard of the principles of natural justice in the conduct of domestic enquiry or with undue haste;

(g) for misconduct of a minor technical character, without having any regard to the nature of the particular misconduct or the past record or service of the workman, thereby leading to a disproportionate punishment.

Section 6:- To abolish the work of a regular nature being done by workmen, and to give such work to contractors as a measure of breaking a strike.

Section 10:- To employ workmen as "badlis", casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.

14. The settled preposition is that these workmen were given intial appointment for a period of one year which was mentioned in their offer of appointment. This period was extended for another two years after completion of one year, according to the conditions in the offer of appointment and further it was being extended from time to time till date and at present also these workmen are working as temporary workmen on consolidated salary. The management witness admits in his cross-examination that the nature of the job is of permanent nature. This admission of Management witness coupled with the fact that services of these workmen were extended from time to time on regular basis till date, strengthens the fact that the job against which these workman have been appointed is a permanent nature but it has been pretended to be of temporary nature which is an unlawful labour practice as defined in 5th Schedule of Industrial Disputes Act,1947, mentioned as above.

15. Now when it has been established that by keeping these workmen temporary on consolidated salary and extending their tenure beyond the period prescribed in their offer of appointment, the Management is guilty of unlawful labour practice. The ends of justice required that this practice be undone by this Tribunal.

16. On the basis of the above discussion, following award is passed:-

A. The action of the management of Ferro Scrap Nigam Ltd. Bhilai in not giving the status of permanency to 11 workmen, namely, Sarvshri Sanjay Bagade, Puna Ram Sahu, Ravi Nayak, Ishwar Lal, Umesh, Jaideep Kumar, Dinesh Kumar Dewangan, Arjun Singh Sahu, Madhusudan Sahu, Jitendra Kumar & Ram Singh and regularizing their services is not justified in law.

B. These 11 workmen are entitled to be absorbed on permanent basis, after expiry of initial one year and extended two years term and are entitled to be regularized accordingly.

C. No order as to costs.

17. Let the copies of the award be sent to the Government of India, Ministry of Labour & Employment as per rules.

P. K. SRIVASTAVA, Presiding Officer

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